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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1964

## No. 674

JACUZZI BROS., INC.,
*Petitioner,*

vs.

LANDON, INC.,
*Respondent.*

INTERNATIONAL MANUFACTURING CO., INC., et al.,
*Petitioners,*

vs.

LANDON, INC.,
*Respondent.*

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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## Appendix A

*United States Court of Appeals*
*For the Ninth Circuit*

No. 18,725

Jacuzzi Brothers, a corporation,
Appellant,

vs.

Landon, Inc., a corporation,
Appellee.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed in part on the issue of wilfulness and otherwise be and hereby is affirmed.

Filed and entered August 31, 1964.

*United States Court of Appeals*
*For the Ninth Circuit*

No. 18,698

International Manufacturing Co., Inc. a corporation, and Rodolfo Jacuzzi, an individual,
Appellants,
vs.
Landon, Inc., a corporation,
Appellee.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed in part on the issue of wilfulness and otherwise be and hereby is affirmed.

Filed and entered August 31, 1964.

## Appendix B

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

| | |
|---|---|
| INTERNATIONAL MANUFACTURING CO., INC., a corporation, and RODOLFO JACUZZI, an individual, *Appellants*, vs. LANDON, INC., a corporation, *Appellee*. | No. 18,698 |
| JACUZZI BROS., a corporation, *Appellant*, vs. LANDON, INC., a corporation, *Appellee*. | No. 18,725 |

[August 31, 1964]

Appeal from the United States District Court
for the Northern District of California,
Southern Division

Before: HAMLEY, HAMLIN and MERRILL, Circuit Judges

HAMLEY, Circuit Judge:

These two cases involve the validity, infringement and misuse of patents covering devices for skimming and filtering the water in swimming pools and vacuuming the side and bottom of such pools. The letters patent in question are No. 2,826,307, granted to Robert M. Pace (Pace patent) and No. 2,844,255, granted to David K. Cavenah and Paul J. Steffan (Cavenah patent), both of which have been assigned to Landon, Inc. (Landon).

In the first case Landon sued International Manufacturing Co., Inc. (International) and Rodolfo Jacuzzi (Rodolfo), who is the sole stockholder, president and alleged alter ego of International. Landon claimed that International and Rodolfo have infringed the Pace and Cavenah patents. International and Rodolfo in general denied Landon's allegations and asserted a number of defenses. Additionally, by way of counterclaim, they sought damages and injunctive relief against Landon under the antitrust laws, charging patent misuse.

In the second suit, which was brought against Landon by Jacuzzi Bros., a corporation, the latter alleged that Landon had charged it with infringement of the Pace and Cavenah patents and asked for a judicial declaration that these patents are invalid and void and that they have not been infringed by Jacuzzi Bros. This plaintiff also sought damages and injunctive relief against Landon under the antitrust laws on the same grounds as were asserted by International and Rodolfo in the first suit. Landon, by way of counterclaim, sought damages and injunctive relief against Jacuzzi Bros. for infringement of the Pace and Cavenah patents.

The two suits were consolidated for trial on the common issue of validity. On the issue of infringement and misuse the two cases were tried separately. In each case a judgment was entered adjudging that the patents are valid and have been wilfully infringed, rejecting the claim of patent misuse, awarding damages for infringement, the amount to be determined in a subsequent proceeding, and enjoining further infringement.

International and Rodolfo appeal from the judgment in the first case and Jacuzzi Bros. appeals from a judgment in the suit which it had brought. We have jurisdiction under 28 U.S.C. § 1292(4) (1958) The cases have been consolidated for purposes of the appeal.

*Validity of the Patents*

The Pace patent is entitled "Fluid Recirculation Systems." It was applied for on August 22, 1955, and granted on March 11, 1958. The invention is for a fluid recirculation system especially adapted for use in swimming pools, having a filter which can be cleaned without backwashing and with provision for recirculation of overflow and surface skimming of the pool.

The construction of the Pace filter includes a filter housing or tank approximately fourteen inches in diameter by thirty-six inches high. This housing is adapted to be mounted adjacent to a swimming pool with its upper end above the normal water level of the pool, flush with the pool deck and with its lower end below the water level of the pool. The housing has a horizontally projecting neck constituting a water passage between the interior of the housing and the pool. A buoyant weir is placed in this neck and water passage to perform a skimming function on water coming into the filter housing from the pool.

A removable filter element assembly is placed in the housing below the water level of the pool. Between the top of the filter element assembly and the neck of the tank is a screen leaf basket to catch leaves and floating debris. In operation, the surface water of the pool flows from the pool over the buoyant weir to and through the leaf basket and the filter element for filtering. The filtered water then passes to an outlet in the housing directed to the suction intake of a pump which draws the filtered water through the outlet and pumps it back to the pool.

The Cavenah patent is entitled "Combination Filter and Surface Skimmer." It was applied for on April 6, 1956, and granted on July 22, 1958. The device of this patent embodies the basic combination of the Pace patent but, in addition, adds additional structure and function which makes it possible to vacuum the pool.

The added structure includes an interior circumscribing shoulder or seat in the housing between the inlet neck and the top of the filter element assembly. A removable shut-off vacuum lid is provided to be removably seated on this shoulder to effect a vacuum pull from the pump through the filter element assembly and a vacuum outlet to the pool. The Cavenah device skims and completely filters the water and also permits the device to be used as a vacuuming device to vacuum the bottom and sides of the pool.

The two principal features of the Pace and Cavenah devices are the skimming and filtering elements. Both of these elements and the other mechanisms and parts incorporated into these devices are old in the art. The trial court found and concluded, however, that the combination of old elements specified in the

Pace and Cavenah patents have a mode of operation which is new in the art. This new mode of operation, the court found and concluded, produces new, different and additional results, and accomplishes the old ultimate result of pool filtering in a more facile, economical and efficient way.

Such combination, the court determined, was not obvious to persons having ordinary skill in the art at the time the invention was made. The court also found and concluded that the patents had not been anticipated by the cited prior art, that Cavenah had not been anticipated by Pace, and that both involved invention. On the basis of these determinations the trial court held that the Pace and Cavenah patents were valid.

Challenging this determination, appellants focus attention upon the standard of invention incorporated in 35 U.S.C. § 103. Under that section the Pace and Cavenah patents should not have been issued if the differences between the unitary skim-filter devices therein described and the prior skimming and filtering art are such that the described devices, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art.

Appellants argue that the findings relating to obviousness are too broad and conclusory to support the determination that Pace and Cavenah met the section 103 test.

The court found that for more than ten years prior to the time of the invention disclosed by the Pace and Cavenah patents, there was available to the swimming pool industry, from a practical viewpoint, only a single type of pool filtering apparatus for pools other than relatively large commercial pools. This apparatus, the court found, was of the sand and gravel type requiring one or more relatively large tanks containing sand and gravel. These tanks, according to the findings, were positioned above ground thirty to sixty feet from the pool because of the deck space they required and because of their unsightly appearance. The findings also list a number of recognized disadvantages associated with this type of device.

The court further found that for years the industry recognized the shortcomings and disadvantages of the sand and gravel filters and sought an answer to the problem. It remained unsolved, the

court stated, until the advent of the filter apparatus of the patents in suit. The findings describe in detail the various features of the Pace and Cavenah devices, listing seven respects in which they acted together to solve the long-standing problem. With regard to the Pace patent the court found that although this solution seemed simple once it was disclosed by the inventor, it escaped the experts in the industry for over ten years.

The findings also deal with the prior art patents and while their principal effect may be to negative anticipation, they also tend to support the determination that what Pace and Cavenah accomplished was not obvious. There are also extensive findings as to the effect of the Pace and Cavenah patents in the industry, showing widespread acceptance of these devices. In our opinion the findings with regard to the test of obviousness, summarized above, are not too broad to support the determination made.

Appellants also contend, however, that the concept of disposing surface skimming and filtering elements within a single package unit was disclosed in prior patents and that the Pace and Cavenah combination of old parts was therefore obvious.

Assuming that the inclusion of these two elements in a single apparatus was obvious, the findings, which are not clearly erroneous, establish that it was the manner of combining these elements which was not obvious, not anticipated, and constituted invention.

The invalidity of a combination patent is not established by showing only that there was, in the prior art, a device containing the same elements. A combination patent envisions a conjunction or concert of known elements which produce some unusual or surprising consequences. *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U.S. 147, 152. It follows that such a combination is not anticipated or rendered obvious by a prior conjunction or concert of the same elements unless the latter produces substantially the same results.

As shown by the findings referred to above, the Pace and Cavenah patents produced unusual and surprising consequences not exemplified in the prior art. Therefore, the fact, if it is a fact, that skimming and filtering devices had been combined in some examples of prior art, does not render the invention of Pace

and Cavenah obvious nor in any other respect render those patents invalid.

*Infringement by Jacuzzi Bros.*

Jacuzzi Bros. manufactured and sold two versions of accused filter devices. The district court found that both versions infringed the Pace and Cavenah patents. On this appeal, Jacuzzi Bros. does not challenge the finding that its devices infringed the Cavenah patent. It does, however, contest the finding that the accused devices infringed the Pace patent.

The skim filter of the Pace patent and of the accused devices are substantially the same except for the filter element which each contains. The accused devices make use of a sock-type filter element whereas the Pace patent device utilizes a disc-like filter element. The court found that the structural and operational differences between these two kinds of filter elements are insubstantial and do not change the mode of operating the skim filters, the result produced being precisely the same. The court therefore found that the sock-type filter element is the full equivalent of the disc-like element, and that both of the accused skim filters are the full equivalents, both structurally and functionally, of the combination disclosed and claimed in the Pace patent.

Jacuzzi Bros. contends that file wrapper estoppel precludes Landon from asserting that the sock-type filter elements of the accused devices are the full equivalents of the disc-like filter elements of the Pace device.

The application for the Pace patent was filed on August 22, 1955. On November 16, 1956, a new claim 10 amended on July 11, 1957, was asserted. This claim defined a filter unit sufficiently broad to embrace both types of filter elements. On October 14, 1957, the Patent Office examiner rejected claim 10 as being unpatentable over certain of the prior art references.

This claim and certain other claims were then cancelled, and four new claims (Nos. 11 to 14) were asserted. The filter element as defined in these claims, which became claims 1 to 4 of the Pace patent, is not broad enough to include, except by application of the doctrine of equivalents, the sock-type filter unit of the accused devices. In submitting the new claims counsel for the applicant

made certain remarks concerning claims 13 and 14, and the Morris prior-art patent, as quoted in the margin.[1]

Predicated on these transactions, which we have set out in barest outline, Jacuzzi Bros. argues that the purpose of the cancellation of claims 5 and 8 through 10, and the assertion of the four eventually-allowed claims was to define the filter element assembly in specific details in a manner which excluded sock-type filter elements. Accordingly, the company contends, Landon may not now expand his claim to include a type of filter element which was purposefully excluded from the Pace claims.

It must be assumed that the redefinition of the filter element, as contained in the added claims which were incorporated in Pace, was purposeful. But this alone would not give rise to file wrapper estoppel so as to preclude patent coverage, on the theory of equivalency, of kinds of filter elements included in the first definition but not in the second. It must also appear that the redefinition was necessary to obtain the patent.

The gravamen of file wrapper estoppel, as this court recently said in *M. O. S. Corp. v. John I. Haas Co.*, 9 Cir., ___ F.2d ___, is that an applicant who acquiesces in the rejection of his claim, and accordingly modifies it to secure its allowance, will not subsequently be allowed to expand his claim by interpretation to include the principles originally rejected, or their equivalents.

As indicated by the statement made by the examiner at the time, claim 10 was not rejected because of an overly-broad definition of filter elements, or because it permitted use of a sock-type filter. It was rejected for the reason that claim 10, read as a whole, was unpatentable over other named patents. The disc-like filter element could not be the heart of the Pace invention since it, as well as the sock-type filter element, is old in the art. What was new, and what was patented, was the combination of parts in which a filter unit is correlated to the remaining elements so

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[1]The remarks were: "Claims 13 and 14 are drawn to the specific construction of the filter housing apart from any pool with which it might be associated. The prior art discloses that it is old and well known to provide filtering means for use in conjunction with swimming or other pools for purifying the water of the pool and reintroducing the water thereto. These two claims are addressed to the specific structure developed by the applicant by which these results may be achieved."

that the combination performs the desired skimming and filtering function.

We agree with the district court that file wrapper estoppel is inapplicable under the facts of this case. It follows that the district court did not err in finding that the accused devices of Jacuzzi Bros. infringed the Pace patent.

*Wilfulness of Infringement*

The trial court determined that the infringement of the Pace and Cavenah patents by International and Jacuzzi Bros. was wilful, intentional and deliberate. Challenging this ruling, these appellants call attention to the fact that courts are traditionally reluctant to find an infringement wilful.

To question the validity of a patent does not, of itself, constitute wilful infringement. *General Motors Corp. v. Dailey*, 6 Cir., 93 F.2d 938, 942. Wilfulness is established only where it is shown that there was a deliberate purpose to infringe, and such a purpose is not found where the validity of the patent and any possible infringement is open to honest doubt. *Artmoore Co. v. Dayless Mfg. Co.*, 7 Cir., 208 F.2d 1, 5.

On August 20, 1958, Jacuzzi Bros. received written notice from counsel for Landon, charging infringement of the Cavenah patent. Counsel for Jacuzzi Bros. gave study to the matter and therefater advised their client that the Cavenah and Pace patents were invalid. Landon thereafter charged Jacuzzi Bros. with infringement of both patents, whereupon Jacuzzi promptly filed its action, involved on this appeal, for a declaratory judgment of invalidity and non-infringement.

While this action was pending the infringing activity of Jacuzzi Bros. continued. On January 3, 1961, another judge of the same district court rendered a decision in another case, not involving Jacuzzi Bros., in which the validity of the Pace and Cavenah patents was upheld. See *Landon, Inc. v. Marine Swimming Pool Equipment Co.*, S.D. Cal., 195 F.Supp. 41. Notwithstanding this decision, of which it had knowledge, Jacuzzi Bros. continued its infringing activity and this went on even after the district court in the case before us also ruled that the patents were valid.

Substantially the same circumstances exist with respect to the infringing activity of International.

We hold that the finding that the infringing activity of Jacuzzi Bros. and International was wilful, intentional and deliberate is supportable in the record with regard to all such conduct commencing within a reasonable time after the decision was rendered in *Landon, Inc. v. Marine Swimming Pool Equipment Co.*, on January 3, 1961. As for any infringing activity occurring prior thereto, the finding is clearly erroneous.

*Personal Liability of Rodolfo*

The district court adjudged that Rodolfo as well as International, had infringed the Pace and Cavenah patents ". . . by the manufacture and sale of International Manufacturing Co., Inc. skim filters." The damage award for infringement accordingly ran against both International and Rodolfo.

Rodolfo, construing the award of damages against him as predicated solely on the theory that International was his alter ego, argues that the undisputed facts do not establish a basis for applying here the concept of alter ego.

While the district court concluded that International was the alter ego of Rodolfo, we do not believe that this was the only basis of the award against him. The applicable conclusion of law recites among other things that Rodolfo was in personal control of International and acted as its guiding spirit and the active directing hand in full charge of its operations. In pertinent findings of fact, it was additionally found that Rodolfo ". . . directed the manufacture and sale of the accused International Manufacturing Co., Inc. skim filter."

In our view this conclusion and this finding called for application of 35 U.S.C. § 271(b), which provides that "(w)hoever actively induces infringement of a patent shall be liable as an infringer." As in *Marks v. Polaroid Corp.*, 1 Cir., 237 F.2d 428, 435, so here, Rodolfo was the moving, active conscious force behind International's infringement. Under 35 U.S.C. § 271(b) he is therefore subject to personal liability without regard to whether International is his alter ego.

*Patent Misuse*

Appellants argue that Landon was guilty of patent misuse, because it adopted a policy of mandatory package licensing of both the Cavenah and Pace patents. The trial court found that, although the two patents were issued at different times, they together covered only a single article. No commercially feasible device could be manufactured under one of the patents without infringing the other. For this reason, Cavenah and Pace were found to be blocking, or interlocking, patents.

Landon's first efforts to license manufacturers under the Cavenah patent alone were frustrated by the manufacturers' unwillingness to accept Cavenah without also being licensed under Pace. In order to end this impasse, Robert M. Pace, then owner of the Pace patent, and Landon entered an agreement whereby (1) the Pace patent was assigned to Landon, (2) Landon granted Robert Pace a royalty-free, non-exclusive license under both patents, (3) Landon promised to license the patents collectively only, and (4) Landon and Robert Pace agreed to share royalties according to a set formula.

No attempt was made to limit the number of licenses issued pursuant to this agreement. All licenses were offered under uniform terms and conditions to all who wished licenses. Since the agreement was entered into, no one has ever sought a license from Landon under the Pace patent alone or the Cavenah patent alone. Since the agreement was entered into no one has manufactured and marketed a Pace skim filter without also adding thereto the Cavenah vacuuming improvement.

The only aspect of the licensing policy which the appellants now attack is that of licensing both patents collectively and never individually.

The pooling of the patents, licensing all patents in the pool collectively, and sharing royalties is not necessarily an antitrust violation. In a case involving blocking patents such an arrangement is the only reasonable method for making the invention available to the public. *Standard Oil Co v. United States*, 283 U.S. 163, 170.[2]

[2]It is misuse of an otherwise lawful patent pool to attach price fixing agreements as part of the licensing of pooled patents. *United States v. Line Mineral Co.*, 333 U.S. 287. There was no price fixing agreement here.

Appellants argue, however, that mandatory package licensing of all the patents in a pool constitutes patent misuse. Although there is no case precisely in point, appellants call our attention to *American Securit v. Shatterproof Glass Co.*, 3 Cir., 268 F.2d 769, in which it was held that mandatory package licensing of the patents in that case fell within the tying prohibitions of the anti-trust law.

That case is different from the one before us in that it involved competing, rather than blocking, patents. In our opinion this distinction is an important one. Involved in the *Securit* case were method patents which, although they produced the same result, could possibly be used independently without infringing one another. The evil of mandatory package licensing in that case was the prospective licensee, in order to obtain a license under one patent, would be compelled to accept licenses under patents that were not necessarily needed. The same evil does not arise in mandatory package licensing of blocking patents. In such a case, the prospective licensee is being compelled to accept no more than he would, in any event, have to obtain in order to make worthwhile a license under any of the patents.

This analysis of the distinction between the *Securit* case and the one before us also suggests why mandatory package licensing of blocking patents does not constitute an unlawful tying arrangement. A tying arrangement involves two separate, distinct products.[3] As was stated in *Times-Picayune v. United States*, 345 U.S. 594, 614:

> "The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in economic harm to competition in the 'tyed' market."

It follows that it is not an unlawful tying arrangement for a seller to include several items in a single mandatory package when the items may be reasonably considered to constitute parts

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[3]The Supreme Court has defined a tying agreement as "an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." *Northern Pac. R. Co. v. United States*, 356 U.S. 1, 5-6.

of a single distinct product. A license package containing blocking patents may be considered a single distinct product. By definition, blocking patents disclose interdependent parts of the same product. The product—in this case a skimming and filter device for swimming pools—is no less a single product because its novel aspects are disclosed by two interlocking patents. In such a case, not only is it not unreasonable to treat both patents as constituting a single product, but also licensing them in a package deal appears to be the most practical way of making them available for public use.

There is a further consideration which supports the result we reach here. If we were to condemn mandatory package licensing of blocking patents as a patent misuse, an owner of a blocking patent complex would be compelled to license only a part of the patent complex. This would be true even though he knew full well that the licensee would be able to use the patents only by violating the remaining unlicensed patents.

A patent infringement suit arising from such circumstances could produce only one of two results: (1) it would be held that the licensee has obtained a useless license because it cannot be used without infringing other outstanding patents, or (2) it would be held that the license of part of the blocking patent complex carried with it an implied license to utilize the remaining part of the complex.[4]

The only relief a court could logically give in such a case is a privilege to use all the blocking patents or none of them. For this reason, we cannot see how it would be unreasonable for the parties, under these circumstances, to negotiate on an all or nothing basis from the beginning.

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[4]Landon argues that an express license under one patent carries an implied license under any other patent owned by the licensor which will be infringed by operation under the grant. See *National Rubber Machinery Co. v. McNeil Machine & Engineering Co.*, 6 Cir., 132 F.2d 436, 438; *Frederick B. Stevens, Inc. v. Steel & Tubes, Inc.*, 6 Cir., 114 F.2d 815, 819-820. The appellants argue that, on the contrary, the granting of a license under part of a blocking patent complex does not necessarily result in an implied license under the rest. See *Duval Sulphur & Potash Co. v. Potash Co. of America*, 10 Cir., 244 F.2d 698, 701. We do not decide which theory is correct since the issue is not before the court in this case.

Appellants argue that mandatory package licensing of blocking patents should not be condoned because it may result in a prospective licensee being compelled to accept an entire license package—thought by its owner to contain only interlocking patents—even though the licensee believes that he can produce a commercially feasible product under only part of the license package.

This argument is premised on a hypothetical set of facts not involved in our case. If we had a case where the licensee could produce a commercially acceptable product utilizing one patent but not infringing the others in the package, then clearly we would not have a case involving blocking patents. That we do not have such a hypothetical case is confirmed by the fact that appellants have not attempted to show what kind of device could be made under one of the patents in this case without violating the other.[5] It is further confirmed by the fact that the product that the appellants did in fact manufacture infringed both patents.

Appellants further argue that the result we reach is undesirable because it may bring about mandatory package licensing of patents, all of which appear to be interlocking but which are not all valid. The prospective licensee, in being compelled to accept licenses under all of the patents, would arguably be prevented from ever successfully challenging the invalid patents. The difficulty with this argument, again, is that it poses a hypothetical set of facts not involved in our case. It would be a patent misuse to force a licensee to accept a license under an invalid patent as the condition for receiving a license under a valid one. But such a case is not involved here, since both the Cavenah and Pace patents have been found to be valid.

The judgments are reversed in part on the issue of wilfulness, and otherwise affirmed. Appellee will recover costs on the appeals.

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[5]On cross-examination, Jack E. Hursh, one of Landon's attorneys, testified that the invention of the Pace patent can be used without using the invention of the Cavenah patent, and that possibly a structure can be made which would infringe the Cavenah patent without infringing the Pace patent. This testimony, however, dealt with hypothetical possibilities insofar as physical structure is concerned, and not with any practical use which could be made of the structure. The uncontradicted evidence is that the only commercial market, or desire on the part of the public, is for a skim filter unit utilizing the inventions of both Pace and Cavenah, and the court so found.

## Appendix C

*In the United States District Court*
*Northern District of California*
*Southern Division*

Civil Actions Nos. 38,754 and 38,871

Landon, Inc., a corporation,
Plaintiff,

vs.

International Manufacturing Co., Inc., a corporation, and Rudolph Jacuzzi, an individual,
Defendants.

Jacuzzi Bros., a corporation,
Plaintiff,

vs.

Landon, Inc., a corporation,
Defendant.

### ORDER FOR JUDGMENT IN FAVOR OF LANDON, INC.

These cases having been tried, argued, briefed and submitted for decision and the same having been fully considered,

The Court finds that the patents in suit are valid, and concurs in the decision* of Judge Yankwich (No. 480-60-Y,

*Hereto annexed.

U.S.D.C., S.D. of California, Landon, Inc. v. Marine Swimming Pool Equipment Co.

It Is Ordered that judgment be entered in favor of Landon, Inc. and against International Manufacturing Co. in case No. 38754 and in favor of Landon, Inc. and against Jacuzzi Bros. in case No. 38871, upon preparation of findings of fact, conclusions of law and judgment pursuant to this Order.

Dated: September 12, 1961.

George B. Harris,
United States District Judge.

Filed, September 12, 1961,
James P. Welsh, Clerk.

*In the United States District Court*
*Southern District of California*
*Central Division*

No. 480-60-Y

Landon, Inc., a corporation,
Plaintiff,
vs.
Marine Swimming Pool Equipment Co., a corporation,
Defendant.

DECISION

The above entitled cause heretofore tried, argued and submitted is now decided as follows:

Upon the grounds stated in the Comment to follow the Court finds that the claims of Letters Patent No. 2,826,307, issued to R. M. Pace on March 11, 1958, especially Claim 2 thereof, and the claims of Letters Patent No. 2,844,255, issued to D. K. Cavenah, et al., on July 22, 1958, especially Claim 4 thereof, are and each of them is valid and infringed by the defendant's devices.

Judgment will be for the plaintiff as prayed for in the Complaint. Single damages to be ascertained upon reference to a Master when the interlocutory decree shall have become final, unless the parties shall agree upon a basic licensing fee. (35 U.S.C.A., § 284)

Costs to the plaintiff. No attorneys fees. (35 U.S.C.A. § 285) Formal findings and judgment to be prepared by counsel for the plaintiff under Local Rule 7.

## COMMENT

It is accepted law that when a patent combines elements which produce, in combination, a new, better or different result there is invention over the prior art. (1 Walker on Patents, Deller's Ed., 213, 215-216; 2 Ibid, 788-789; Hailes v. Van Wormer, 1874, 87 U.S. 353, 368-369; Brinkerhoff v. Aloe, 1892, 146 U.S. 515, 516; Himes v. Chadwick, 9 Cir., 1952, 199 F.2d 100, 106; Great Lakes Equipment Company v. Fluid Systems, Inc., 6 Cir., 1954, 217 F.2d 613, 617; Cold Metal Process Co. v. Republic Steels Corp., 6 Cir., 1956, 233 F.2d 828, 829; Application of Wynne, CCPA, 1958, 255 F.2d 956)

The patented device is a valid combination which conforms to this principle. In essence, what was done is to combine the skimming operation with the filtering operation of swimming pools into one apparatus in which "the old elements perform a new function in their new environment." (Cold Metal Process Co. v. Republic Steels Corp., supra p. 839)

The old elements contained in the two apparatuses which the patented device combined were the weir, the throat, the removal basket and the waffle-type filters. New elements were also introduced.

As to the *Pace* patent the new element is the tank which has the skimming element formed as a part of it and which is capable of receiving both the basket and the filter element, which has in its bottom the removable fitting for receiving the core of the filter, the fitting being connected with a pipeline that runs to the pump.

As to the *Cavenah* patent the new elements are a vacuum intake below the weir throat and a shutoff plate

seat in the tank below the weir throat, a removable shut-off plate to seat on that seat so as to shut off the flow from the weir and enable the vacuum to pull through the tank, the filter and the pump.

The new device has better visual appearance; it is lighter, easier to operate and can be operated and cleaned more economically and without waste of water. Indeed, it can be operated and cleaned by unskilled labor, whereas the other two require skilled labor.

The combined apparatus prevents the accumulation of foreign matter in the pipes, protects the pump, and requires less maintenance and service. So, on the whole, we have a combination which achieves easier, better, newer and more economical results than the devices, the elements of which it has successfully combined. This is invention.

That the accused device infringes the patents in suit cannot be doubted. The deviations in its construction are not sufficient to avoid infringement. I am also of the view that the patent is valid and that not one of the patented devices cited, as to either patent, is anticipatory of or achieves these results in this manner.

Without going into a detailed analysis I state that this is also true of the best references cited as to *Pace*, such as British Patent 557,393, Wall 1,687,027, MacKinley 1,850,393 or Kracklauer 2,639,291, and those cited as to *Cavenah*, such as Pace 2,844,255, Wise 1,074,769, King 2,701,235 or British Patent 348,794.

Hence the ruling above made.

Dated this 3rd day of January, 1961.

Leon R. Yankwich,
U. S. District Judge.

Tuesday, April 24, 1962

REMARKS OF THE COURT

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The Court: Any further comments, gentlemen?

Mr. Neal: No, Your Honor.

The Court: The matter is submitted on the evidence. My determination in connection with this case is probably as good now as it will be 30 days from now or two weeks, or a day.

I have heard a great deal of the evidence in one form or another and the case has occupied a great deal of the attention of the Court. It has had many unusual facets, and when counsel refers to the elephant, I sometimes wonder, without being facetious, the particular part of the elephant that had been presented to the Court. Probably obscured by the magnitude of the elephant, I am unable at this juncture to see or perceive any violation of the Sherman Act.

I have tried many of these cases in different forms and, in my opinion, from the evidence collated and presented to me and referred to in the record, there is no evidence to support a finding made by this Court that the defendant Landon, or cross-defendant Landon, was or is guilty of a violation of the Sherman Antitrust Act.

And above and beyond that, I would be unable to point, and I ask counsel to point, to any evidence of conspiracy, and one would have to strain and indulge in unfair inferences to glean anything from the record that would even approximate a conspiracy.

As I see the case reduced to its simplest form, Pace and Landon, after legal opinion on the part of Mr. Hursh, sought to and did enter into an agreement, and as a result of the pact, they sought to and did protect the agreement and advance it in the form of traditional type of licensing.

The evidence, in my opinion, is bare of any misuse, unless, of course, we again indulge in presumptions not borne out by the record.

Counsel for Jacuzzi and International points to different segments, different parts of the record, and attempts to correlate them, but they fall of their own weight because underlying this whole case is, in my opinion, an attempt to build up a cross-bill and a defense wherein the evidence was barren of any support.

With respect to the infringement, it is conceded in court that the International represents a so-called "Chinese copy" and I find that International has infringed the basic *Jacuzzi* patents, including the Pace—

Mr. Mellin: You mean Cavenah.

The Court: I beg pardon.

Mr. Mellin: You said Jacuzzi; you meant Cavenah.

The Court: Cavenah. Pardon me, Cavenah.

With regard to the situation confronting the Court in connection with Jacuzzi, if the Court accepts the doctrine of Sanitary Refrigerator Company v. Winters, wherein it was said at 280 U.S., page 42:

> "Authorities concur that the substantial equivalent of a thing in the sense of the patent law is the same as the thing itself, so that if the two devices do the same work in substantially the same way and accom-

plish substantially the same result, they are the same, even though they differ in name, shape or form."

It is quite evident that the filters do differ in shape and form but they do accomplish the same result in about the same way.

The only problem that I see and that now confronts me, and that I haven't been able to orient myself to with any degree of finality, is the circumstance advanced by counsel representing Jacuzzi that the doctrine of estoppel under the file wrapper applies, and as to that point I should like a memorandum on both sides so that I may orient myself to the particular problem involved. It was difficult for me to follow—perhaps I am obtuse or maybe I am tired—the specification under Claim 10 as it related to 5, 8 and through 10.

If as contended for by Mr. Neal the doctrine of estoppel applies, then he advances the argument that the rule that is announced in the case recently adverted to does not apply. I should like a short brief on that.

As to International, there isn't any question in my mind as to infringement.

The cross-bill in this case predicated upon the alleged or asserted violation of the Sherman Act is to a large extent predicated upon the Dairy Foods case reported in 297 Fed 2d 805. It is probably unnecessary for me to indicate my opinion concerning the question whether or not the expenses of litigation afford the basis for a claim for damages to property or an injury to property, or a legal injury in contemplation of the Clayton Act or the Sherman Act. In this regard I would agree with the concur-

ring opinion by Circuit Judge Schnackenberg wherein he points out:

> "No citation of any statutory authority has been made to show that the financial burden of the expenses of defense of litigation has been treated by the courts as damages to be recovered other than costs and attorneys' fees. Moreover, the common law rule is well settled that with the exceptions of costs and attorneys' fees, there can, as a general rule, be no recovery as damages of the cost and expenses of litigation."

This rule has been repeatedly recognized in the federal courts. Actually, the only matters pleaded in the counterclaim to show injury are this defendant's expenses in defending itself in this case brought by plaintiff and in investigating plaintiff's patent. These do not appear to me to constitute such injury to business or property sustained by the defendant as will support the counterclaim charge of an antitrust violation.

In the case at bar, the only claim made by Mr. Neal in connection with the injury is that occasioned as a result of the alleged costs and expenses of defending actions. I would be of the opinion, in concurring with Judge Schnackenberg, that that is not sufficient to avoid the application of the rule of Wolf v. National Lead Company in 225 Fed 2d 427, wherein my late colleague, Judge Goodman, was affirmed by the Court of Appeals, Justice McAllister speaking for the court, holding that the essential ingredient of this type of suit for an antitrust action, it being a private suit, must necessarily rest upon proof of injury in contemplation of that type of injury

traditionally shown in private damage suits; that is, an injury to the property as such, or a loss or damage that might be shown.

I may or may not have mentioned the general assertion made as to the misuse of the patent. I can find no evidence of misuse.

The Court is next confronted with the question whether or not attorney's fees should be allowed in the light of the general contours that the case has taken, and whether or not the contention advanced that this is a case for increase of damage is borne out by the record. I should consider this phase of the case temperately, and although I feel that Jacuzzi and International have sought to inject in this controversy every conceivable type of defense with or without merit, nevertheless, I should like to reserve judgment and consider that phase of the case along with the question of attorneys' fees at a later date, upon notice.

I shall also receive from counsel the short brief bearing upon the question of estoppel under the file wrapper.

Mr. Mellin: One point, Your Honor, is whether or not the Jacuzzi device is an infringement of the Cavenah patent.

The Court: Of the Cavenah.

Mr. Mellin: I didn't understand Your Honor to rule on that. The estoppel question comes up in the Pace patent.

The Court: That's right.

Are there any other questions, gentlemen, that you have in mind?

Mr. Mellin: What I tried to tell the Court—I just simply wanted to make it clear the Court didn't seem to rule as to whether or not the Cavenah patent was infringed by the Jacuzzi device.

The Court: I thought I ruled on that.

Mr. Mullin: I don't have it in my notes. I don't think so, Your Honor. You ruled on the Cavenah patent with respect to International and then you asked for briefs in connection with the infringement of the Jacuzzi of Pace, you know, in which the estoppel question arose, but that estoppel question wasn't raised in the Cavenah matter. It is a different question.

The Court: There isn't any question in my mind, gentlemen—some higher court may feel otherwise, but I feel that the Jacuzzi patent certainly comes within the scope and intendment of the rule as announced in the Sanitary Refrigerator case. I can't see any other reasonable or logical conclusion, and, accordingly, I so rule, that there has been an infringement.

Mr. Mellin: In other words, as I understand Your Honor's ruling, the Jacuzzi device infringes the Cavenah patent?

The Court: That is what I intended to say.

Mr. Mellin: Thank you, sir.

I would ask the reporter to correct "patent" to "device."

The Court: The record may be so corrected.

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*In the United States District Court*
*Northern District of California*
*Southern Division*

Civil Action No. 38,871

| | |
|---|---|
| Jacuzzi Bros., a corporation, Plaintiff, vs. Landon, Inc., a corporation, Defendant. | Civil Action No. 38,871 |

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

## FINDINGS OF FACT

## AS TO THE VALIDITY OF THE PATENTS IN SUIT

*The Parties*

1.

Landon, Inc. is a corporation of California and has a principal place of business at San Carlos, State of California, within the Northern District of California, Southern Division.

2.

Jacuzzi Bros. is a corporation of California and has a principal place of business at Richmond, State of California, within the Northern District of California, Southern Division.

*The State of the Art*

3.

The Court finds, from the uncontradicted testimony in this case, that for more than ten years prior to the time of the invention disclosed in the patents in suit, there was available to the swimming pool industry, from a practical viewpoint, only a single type of pool filtering apparatus for pools other than relatively large commercial pools. This apparatus was of the sand and gravel type requiring one but usually more than one relatively large tank containing sand and gravel, which tanks were positioned above ground thirty to sixty feet from the pool because of the deck space they required and because of their unsightly appearance. In addition to unsightliness, this type of filtering apparatus had a number of recognized disadvantages, among which were:

(a) the high cost of the filtering equipment and high cost of installation;

(b) this type of equipment required backwashing at regular intervals to clean the filter media, and each such backwashing required the use and waste of hundreds of gallons of water, and also required a sewer connection or equivalent disposal connection to the filter for the waste water disposal;

(c) high maintenance cost, particularly periodically when skilled labor was required to change the filter media;

(d) relatively short-lived, because the tanks (due to cost) had to be of ferrous metal, and rusting caused tanks to leak and to require replacing;

(e) water from the pool (even when a weir throat was provided) necessarily traversed through restricting pipe directly into a pump before reaching the filter, thus causing the water from the pool to flow through a restricted orifice and presenting the hazard of clogged pipes and prematurely worn pump because foreign matter, such as sand, lint and oils, traveled through the pipe and pump before being filtered.

4.

That for years the industry recognized the shortcomings and disadvantages of the sand and gravel filters and sought an answer to the problem, but the problem remained unsolved and the industry remained saddled with the costly and inefficient sand and gravel filters until the advent of the filter apparatus of the patents in suit.

5.

That at the time of the inventions there existed and was known a diatomaceous earth type of filter for large public type pools. This filter was of the general type shown in Exhibits AH and S and was far too costly to build and maintain to be used except in connection with relatively few and relatively large public pools.

*The Pace Patent in Suit No. 2,826,307*

6.

That the invention of the Pace patent produced a pool skim filter having a new mode of operation and producing new results, and producing the old ultimate result of

filtering in a more facile, economical and efficient way, as follows:

(a) The invention produced a complete skimming and filtering device which could easily be positioned out of sight at pool side with only a relatively small deck plate (flush with the pool deck) being visible, thus not detracting from the decorative surroundings of the pool; this in contrast with the prior unsightly sand and gravel filters;

(b) by the invention, a complete skimming and filtering device was provided which was small and compact as well as being light in weight, thus enabling it to be delivered to the job in the trunk of an automobile and handled and installed easily by one man; this in contrast with the bulky, heavy sand and gravel filters and over a ton of filter media requiring the use of a truck to deliver and at least two men to handle and install;

(c) by the invention, a complete skimming and filtering device was provided which could be positioned and cemented in place easily during the pouring or guniting of the pool; the prior sand and gravel filters required a separate concrete slab for mounting;

(d) by the invention, a complete skimming and filtering device was provided which could be purchased and installed at a cost from one-third to one-half less than that of a sand and gravel filter system of comparable capacity and filtering efficiency; for example, in systems of equivalent capacity, for one pool size, the cost of a sand and gravel system installed is $736.51 as against $389.10 for the system using the patented skim filter;

(e) by the invention, a complete skimming and filtering device was provided which requires no backwashing and

no sewer or waste disposal connection as its filter can be removed by the pool owner and cleansed by washing off with a garden hose with something less than forty gallons of water; this in contrast with the use and waste of four hundred to one thousand gallons of water required to backwash a sand and gravel filter, the necessity of a sewer or equivalent connection to dispose of the wasted water, and the replacement in the pool of the water wasted in backwashing;

(f) by the invention, a complete skimming and filtering device was provided which can be easily serviced by the pool owner even to the extent of replacing the entire filter element; all that is required when cleaning the filter is to remove the light, relatively small filter element through the top of the tank and wash it off with a garden hose and replace it; if a new filter element is required, it is only necessary to simply remove the old and lower a new one into the tank; this in contrast with the requirement of skilled labor and long hours of work in replacing the filter media in the sand and gravel type; and

(g) by the invention, the water to be filtered entering the skimmer flows completely unrestricted directly to the filter without traveling through a pipe or any restricted orifice, thus eliminating the possibility of pipe clogging; also, the water is filtered before reaching the circulating pump and this eliminates premature wear on the pump.

7.

The combination device of the Pace patent in suit has a mode of operation which is new in the art and the combining of the elements into the patented device, as taught

by the patent, to produce this new mode of operation and the new, different and additional results, and to effect the old ultimate result of pool filtering in a more facile, economical and efficient way, was not obvious to persons having ordinary skill in the art at the time the invention was made.

8.

By combining the elements forming the patented skim filter in the novel manner taught by the Pace patent, every element coacts with every other element to produce new, additional and different functions and results which were new in the art, and to effect the old ultimate result of filtering of a swimming pool in a more facile, economical and efficient way, as set out in Finding of Fact No. 6.

9.

Although the solution, by the invention of the Pace patented device, to the problem confronting the industry seemed simple once it was disclosed by the inventor, it escaped the experts in the industry for over ten years and hence the Court finds that the patented apparatus involved invention and not merely mechanical skill.

10.

Even though the skimming and filtering elements of the Pace patented combination are separately old in the filtering art [for example, separate skimmers are shown to be old in Exhibits D, F, K, AE, AI and King Patent No. 2,701,235, and filter elements per se are shown to be separately old in Exhibits L, M, N, P, Q, R, AF, and the patents to Fellows No. 1,989,795, Lowe British No.

557,393 (included in Exhibit A), and Townsend No. 2,507,127 (included in Exhibit 6)], the concept of combining these two separately old elements with a new element (the tank) in a manner enabling the water to be filtered entering the skimmer, to flow unrestricted to the filter and thence to the pump, produced a skim filter having a new mode of operation producing new results, and the old ultimate result of pool filtering in a more economical, efficient and facile manner as set out in Finding of Fact No. 6, and this combination was not obvious to one skilled in the art at the time the invention was made and constituted invention.

11.

The prior King Patent No. 2,701,235 (included in Exhibit A) is pointed to by the defense as an anticipation of the Pace patent, the defense contending that this patent shows the combination of the Pace patent. The Court rejects this contention and finds as fact that the King patent disclosure necessarily requires, to accomplish its purpose, intersecting vertical and horizontal pipes (numbered 9 and 16 in the King patent drawing) between the separate skimmer and separate remotely placed filter tank. The construction of the King apparatus enables sand and like heavy debris entering the skimmer to drop back into the pool through pipe 16 (of the King drawing) and opening 33 (of the King drawing). The Court also finds as a fact that to reconstruct the King apparatus to meet the patented apparatus would:

(a) completely change the construction of the King apparatus as disclosed;

(b) completely change the mode of operation of the King apparatus as disclosed; and

(c) entirely transform the King concept.

12.

The apparatus of the King patent is incapable of producing the results of the Pace combination as set forth in Finding of Fact No. 6, and it is constructed and has a mode of operation materially different from the patented combination.

13.

The Cunliffe Patent (British No. 348,794) and the Iki patent No. 1,245,721 (both included in Exhibit A) are so entirely and substantially different from the Pace patented combination, both in construction, mode of operation and results produced, that any contention that they individually or collectively anticipate the Pace invention is completely without merit. The Cunliffe patent discloses a water circulating and screening system for swimming pools. The Iki device shows a water circulating and purifying tank for feed water systems for boilers, and neither is adapted for nor capable of operating in the manner of the patented skim filter nor capable of producing its results.

14.

The prior art books, AH, S and Y, disclose that broadly speaking "vacuum diatomite filters" were old in the art, but these prior filters are of no pertinency as anticipations of the inventions of the Pace patent in suit because these filters are not constructed nor do they operate

in any fashion as does the apparatus of the Pace patent in suit, nor do these prior filters include (except broadly a filter) the elements of the Pace patented combination.

*The Cavenah Patent in Suit No. 2,844,255*

15.

The invention of the Cavenah Patent No. 2,844,255 in suit is the concept of providing the patented combination of the Pace Patent No. 2,826,307 with additional new elements to equip the Pace patented skim filter with the additional function or ability, which is to vacuum the bottom of the pool. The new elements include the vacuum intake below the weir throat, shut-off plate seat between the weir throat and the vacuum intake, and a removable shut-off plate (removable both from the seat and tank) to seat on that seat and shut off the flow from the weir to the filter chamber to enable the pump to create a vacuum through the vacuum intake (to which a vacuum hose and fitting communicates) to draw the water directly into the filter chamber, through the filter element to the pump.

16.

The contribution of the Cavenah invention to the Pace combination was a valuable contribution to the art, and the combination claimed by the Cavenah patent has a new mode of operation and produces the old ultimate result of pool vacuuming in a more facile and efficient way.

17.

The combination device of the Cavenah patent in suit has a mode of operation which is new in the art, and the

combining of the old elements and the new elements into the patented device, as taught by the patent to produce this new mode of operation and the new, different and additional results, and to effect an old ultimate result in a more facile and efficient way, was not obvious to persons having ordinary skill in the art at the time the invention was made.

18.

By combining the old and new elements forming the apparatus of the Cavenah patent in suit, every element coacts with the remaining elements to produce new, additional and different functions and results which were new in the art, and to effect the old ultimate result of vacuuming a pool in a more facile, economical and efficient way.

19.

The prior King Patent No. 2,701,235, and the prior Cunliffe British Patent No. 348,794 (both included in Exhibit A) show means of vacuuming a pool. These prior patents do not disclose the combination disclosed and claimed in the Cavenah Patent No. 2,844,255 or an equivalent apparatus. In construction and mode of operation the Cavenah apparatus is substantially different from the King and Cunliffe disclosures and the latter do not anticipate the Cavenah invention.

20.

The Pace Patent No. 2,826,307 in suit, although prior to the Cavenah Patent No. 2,844,255 in suit, does not anticipate the Cavenah invention nor negative invention therein, in that the Pace combination does not include the

new elements or the new functions of the Cavenah concept nor produce the new additional results of the Cavenah invention. Even in view of the Pace apparatus, the Cavenah invention was not obvious to one skilled in the art at the time the Cavenah invention was made.

*Immaterial Prior Art*

21.

That the patents to Greth No. 1,144,327, Test No. 1,917,614, Shawhan No. 2,167,466, and Leslie No. 2,809,752, also offered in evidence (included in Exhibit A), are completely inmaterial as anticipations of the Pace and Cavenah inventions in that they disclose circulating systems and apparatus completely foreign in construction and mode of operation to the patented combinations. The Pace Patent No. 2,900,079 is subsequent to the Pace and Cavenah patents in suit and consequently is not prior art.

*The Effect of the Inventions in the Industry*

22.

Commencing in the year 1956, when the patented filters were first made known, and extending to the year 1961, the ratio of sales in the areas into which the patented filters were introduced, as shown by the evidence, was 75% to 80% patented skim filters and 20% to 25% sand and gravel filters, and that during that period in excess of 22,000 of the patented skim filters were sold.

23.

That following the introduction of the patented skim filters, all of the acknowledged leaders in the swimming

pool equipment industry, Paddock of California, National Pool Equipment Co., Swimquip, Inc., and Ryder-Elliott, Inc., paid tribute to the inventions by taking licenses under the patents in suit and paying royalties for the use of the inventions.

*Prior Art Previously Considered*

24.

That the best and most pertinent prior art relied upon at the trial as invalidating the patents in suit was before and considered by the United States Patent Office during the examination of the applications for the patents in suit.

25.

That the best and most pertinent prior art relied upon at this trial as invalidating the patents in suit was previously in evidence and before the United States District Court for the Southern District of California, in Civil Action No. 480-60-Y, known as "Landon, Inc. v. Marine Swimming Pool Equipment Co.," in which previous action the present patents in suit were adjudged to be valid.

*As to Infringement of the Pace Patent*

26.

The skim filter of the Pace patent in suit and both of the accused Jacuzzi Bros. skim filter devices, Landon Exhibits 25 and 26, comprise essentially a substantially cylindrical filter housing (sometimes called a tank) adapted to be mounted adjacent a swimming pool with its upper end above the normal water level of the pool and flush with the pool deck and with its lower end below the

water level in the pool. The housing has a substantially horizontally projecting neck constituting a water passage between the interior of the housing and the pool. A buoyant weir is disposed in the neck and water passage to perform a skimming function on the water coming into the filter housing from the pool. A removable filter element assembly is disposed in the housing below the water level of the pool. In operation, the surface water of the pool flows from the pool over the buoyant weir to and through the filter element for filtering and filtered water passes to an outlet in the housing directly to the suction intake of a pump which draws the filtered water through the outlet and pumps it back to the pool.

27.

Both of the accused devices differ but colorably only from that disclosed in the Pace patent in that the accused devices use a plurality of tubular sock-type filter elements which are made of fabric, whereas, in the Pace skim filter, the filter elements are in the form of fabric disc-like filter elements.

28.

The specific sock-type filter elements used in the accused device were well known in the art for filtering water prior to their use in the accused device and prior to the invention of the Pace skim filter.

29.

The disc-like filter elements shown in the Pace patent in suit were well known in the filtering art prior to the invention of the Pace skim filter.

30.

The sock-type filter elements and the disc-type filter elements are fully equivalent in that in each case water is filtered in precisely the same manner with equal efficiency; the only difference being that in the sock-type the water passes from the interior to the exterior thereof, whereas in the disc-type the water passes from the exterior thereof to the interior thereof without any change in the filtering function or filtering efficiency.

31.

In the accused filters the sock-type filter elements are separately removable through the open upper end of the housing for cleaning, while in the Pace patented disclosure all of the disc-type filter elements are removable through the open upper end of the housing as a unit; this difference is an immaterial difference in the form of the specific filter elements only and does not affect any substantial change in mode of operation, function or result.

32.

In the accused filters the hollow core which receives the filtered water from the filter elements and directs it to the intake of the pump remains fixed in the housing due to the fact that the filter elements are not attached to it and are separately removable from the housing, however, in operation the filtered water, after passing through the filter elements from the inside to the outside, passes into the hollow core and thence to the intake of the pump. In the Pace patented disclosure the disc-type filter elements are fixed on the hollow core and all are removable as a unit

through the upper end of the housing and the water passes from the outside to the inside of the filter elements into the hollow core and thence to the intake of the pump. These differences in construction are insubstantial and do not, except in a colorable manner, change the mode of operation of the skim filters and the result produced is precisely the same. I reject all of the testimony of the witness, Mr. Nash, given in the form of expert opinion or conclusions to the effect that such changes are substantial in nature and effect substantial changes in the mode of operation and results obtained as being contrary to the facts.

33.

The difference between the two accused devices is insubstantial in that in the earlier model of the two (Exhibit 25), the hollow core which receives the water from the filter elements was located centrally of the housing (as it is in the Pace patent), while in the later model (Exhibit 26) the hollow core is located in an eccentric position, without, however, any change in the filtering operation or mode of operation or results produced.

34.

The form, function and filtering abilities of both types of specific filter elements (the sock-type and the disc-type) were old and well known long prior to the Pace and Cavenah inventions in other filtering systems.

35.

I find that both of the accused skim filters are the full equivalent, both structurally and functionally, of the skim

filter combination disclosed and claimed in the Pace patent in suit in that the accused skim filters operate in substantially the same way by substantially the same means to accomplish the same result as does the patented skim filter. In mode of operation and function, in each case the surface water from the pool passes over the top of the buoyant weir and flows into the filter housing. In each case, the water then passes through the filter elements, with the dirt in the water being trapped thereby, to an outlet in the housing to the intake of the pump.

36.

I find that Jacuzzi Bros., although making insubstantial changes in construction, has taken the heart of the Pace invention and that the insubstantial changes merely resulted from the substitution of an old and well-known form of filter element assembly in the accused filters for the old form of filter element assembly shown in the Pace patent.

37.

I find that the various minor structural differences between both of the accused filters and the Pace filter are insubstantial and have resulted merely because of the structural requirements necessary to complete the substitution of the old sock-type filter elements. These structural differences do not affect in any way the mode of operation or result of the accused skim filter as compared to the Pace skim filter.

38.

The accused Jacuzzi Bros. skim filters, as the result of substituting the old sock-type filter elements for the disc-

type filter elements of the Pace patent, are less efficient than the patented skim filters in that they are more expensive to manufacture and require a larger and more expensive housing to obtain the same amount of filter area.

39.

The Court also finds that each element of the combination claimed by Pace in the Pace patent finds its full functional, structural and mechanical equivalent and counterpart in the elements used by Jacuzzi Bros. in both of the accused skim filters.

40.

It appears that in both of the Jacuzzi Bros. accused devices the flow of the water is from the inside of the sock-type filter elements to the outside thereof and thence into the hollow core, rather than from the outside of the filter element into the interior thereof and thence into the hollow core as in the Pace disclosure. I find that this difference is functionally immaterial and the two are full mechanical equivalents.

41.

It appears that the location of the outlet from the housing of the accused Jacuzzi Bros. skim filter, Landon Exhibit 26, is located on the side of the housing instead of at the bottom of the housing, as shown in the Pace patent in suit, but nevertheless I find that this difference in location is immaterial functionally and that in spite of this colorable difference, this accused skim filter is the full structural, mechanical and functional equivalent of the patented Pace skim filter.

42.

During the prosecution of the Pace patent in suit, the Patent Office at no time rejected any claim of the Pace patent as being unpatentable over a device having a sock-type filter of the kind used in the accused Jacuzzi Bros. filter or required the claims to be limited to a disc-type filter. Even though the claims submitted during the prosecution of the Pace patent in suit specified a stacked disc-type filter element, the prior art did not require such specification. Pace at no time, directly or by inference, disclaimed the use of an equivalent sock-type filter in the combination claimed by Pace.

43.

The Court finds that Landon, Inc. is not reclaiming any ground given up during the prosecution of the Pace patent in suit by claiming here that the old sock-type filter element is the full equivalent of the stacked disc-type filter element specified in the claims of the Pace patent.

44.

Claims 1, 2, 3 and 4 of the Pace patent in suit read on the Jacuzzi Bros. accused skim filter in every respect except that each claim calls for the stacked disc-type filter elements disclosed in the Pace patent in suit. However, I find that the sock-type filter element assembly used by Jacuzzi Bros. is the full mechanical, structural and functional equivalent of the stacked disc-type filter element shown in the Pace patent in suit, both when the two filter elements are considered by themselves and also when these filter elements are employed in the combination

invented by Pace. I find this equivalency because such filter elements differ in shape and form only and not in function or result.

*As to Infringement of the Cavenah Patent*

45.

The Cavenah patent discloses the entire combination shown in the Pace patent as set out in Finding No. 1, but, in addition, adds an interior circumscribing shoulder or seat in the housing intermediate the inlet neck and the filter element assembly. A removable shut-off vacuum lid is provided to be removably seated on the said shoulder to effect a vacuum pull from the pump through the filter element assembly and a vacuum outlet to the pool. The latter may be in the vacuum lid or in the side of the housing. The patent discloses such connection in both places.

46.

The elements of the Cavenah filter added to the Pace filter, as set out in the previous finding of fact and as shown in the Cavenah patent in suit and as set forth in the Cavenah patent claims, each find full and complete correspondence in the accused skim filters made by Jacuzzi Bros., both structurally and functionally.

47.

The Cavenah vacuuming elements disclosed in the Cavenah patent in suit and the vacuuming elements of the accused skim filters all function exactly the same way by the same construction to accomplish exactly the same result. In each case, when the removable vacuum cover has

been removed, the filters operate to perform a skimming and filtering function, exactly as described above in connection with the Pace patent. When the removable vacuum cover is put in place, the normal flow of water from the surface of the pool over the weir and to the filter elements is cut off. Instead, flow can then place through a vacuum cleaner attachment which is connected to deliver water to the filter housing below the removable vacuum cover, exactly as described above in connection with the Cavenah patent. The vacuum cleaner attachment may then be used to clean the sides or bottom of the pool.

48.

I find that Jacuzzi Bros. appropriated the invention disclosed and claimed in Cavenah patent and has employed the same in a skim filter in which is substituted one well-known form of filter element in the combination for the well-known filter element shown in the Pace patent.

49.

Jacuzzi Bros. conceded during the trial that claims 1, 3, 4 and 5 of the Cavenah patent in suit read word for word on the accused device made by Jacuzzi Bros., and I find this to be so.

50.

The sock-type filter element used by Jacuzzi Bros. in their accused devices and the stacked disc-type filter elements shown in the Cavenah patent in suit operate in conjunction with the vacuuming improvement of the Cavenah patent in precisely the same way to produce exactly the same result.

51.

Claims 1 and 2 of the Cavenah patent in suit both specify, inter alia, "a vacuum cleaner attachment in said collector tank beneath said cover and said filter." I find that the accused Jacuzzi Bros. skim filters respond fully, both literally and in substance, to such specification.

52.

Claim 2 of the Cavenah patent in suit sets forth, inter alia, various details of the stacked disc-type filter element shown in the Cavenah patent in suit. I find that the sock-type filter element used in the accused devices is the full mechanical, structural and functional equivalent of the stacked disc-type filter element shown and claimed in the Cavenah patent in suit, both when considered separately from the combination shown in the Cavenah patent and when combined in the patented Cavenah combination, for the reasons expressed in connection with the infringement of the Pace patent.

53.

Claim 3 of the Cavenah patent in suit requires, inter alia, "a vacuum cleaner attachment in said tank beneath said cover." I find that the vacuum cleaner attachments of the accused skim filters are the full functional, mechanical and structural counterparts of the vacuum cleaner attachment shown in the Cavenah patent and claimed in claim 3.

54.

Claim 4 of the Cavenah patent in suit requires, inter alia, "a water inlet to said collector tank permitting flow

of water beneath said cover." I find that the water inlet to the collector tank (housing) of the accused Jacuzzi Bros. skim filters is the full structural, mechanical and functional equivalent of the water inlet shown in the Cavenah patent in suit and claimed in claim 4.

55.

Claim 5 of the Cavenah patent in suit requires, inter alia, "a water inlet in said tank delivering water beneath said cover." I find as a fact that the water inlet in the vacuum lid in the accused Jacuzzi Bros. skim filters is the full structural, mechanical and functional equivalent and counterpart of the water inlet shown in the Cavenah patent in suit and claimed in claim 5.

56.

The contention of Jacuzzi Bros. that claims 3 and 5 of the Cavenah patent in suit are incomplete is untenable. When the Cavenah device is being used with the vacuum lid in place for performing a vacuum operation, the Cavenah skim filter does not perform a skimming operation and the skimming weir therefore does not then cooperate with the elements which are employed in carrying out the vacuuming operation. I find that the elements set forth in claims 3 and 5 are complete in describing a device which can perform a vacuuming operation.

57.

Landon, Inc. commenced the manufacture and sale (before the patents issued) of the patented filters in late

1955 and they were sold in the very first part of 1956. Following the early marketing by Landon, Inc., Jacuzzi Bros. produced and sold a number of copies of the patented filters as put out by Landon, Inc., and thereafter changed the design thereof (late in 1957 or early 1958) to the design of the accused devices; and the Court finds as a fact that the production of the accused devices by Jacuzzi Bros. was prompted by the appearance of the patented filters and with full knowledge of their construction and mode of operation and were not independently conceived by Jacuzzi Bros., and that the Jacuzzi Bros. change to the present design was the result of a studied attempt to appropriate the heart of the inventions of Pace and Cavenah by colorably varying the details of construction thereof.

*As to the Jacuzzi Patent*

58.

The users of the accused filters, if they desire, can obtain from Jacuzzi Bros. a separate fitting for backwashing the sock-type elements of the accused skim filters one by one in addition to removing the elements for cleaning. The use of this additional fitting does not in any manner change the skim filter operation or results. The evidence shows that only a portion of the purchasers of the accused filters obtained such fittings and there is no evidence as to the extent of the use thereof by those obtaining them. The fitting and its use is best shown in Figures 3 and 4 of the drawings of a patent granted Jacuzzi Bros., No. 2,980,256, Exhibit AJ, granted lately, to wit, April 18, 1961.

*As to Notice and Character of Infringement*

59.

Jacuzzi Bros. continued its infringement of the patents in suit after it received notice of infringement from Landon, Inc., and after Judge Yankwich, in the case of Landon, Inc. v. Marine Swimming Pool Equipment Co., C. A. 480-60-Y, Southern District of California, Central Division, held the patents here in suit valid and even after this Court held the said patents valid.

60.

The infringement of the patents in suit by Jacuzzi Bros. was wilful, intentional and deliberate.

61.

Landon, Inc. properly marked the patented filters produced by it in accordance with the requirement of the applicable statute 35 U. S. C. 287.

62.

Jacuzzi Bros. had direct notice of the Cavenah patent upon its issuance and indirect notice of the issuance of the Pace patent.

*As to Misuse, Unclean Hands and Antitrust Law Violation*

63.

The Pace and Cavenah patents in suit are interlocking patents. The Pace patent discloses the general combina-

tion of a filter housing having a horizontal neck extending to and communicating with the pool. A weir is disposed in the neck to perform a skimming operation and a filter element disposed in the housing below the level of the neck to receive and filter the water entering the housing. The Cavenah patent covers an improvement thereon, namely, forming a peripheral seat in the housing below the inlet neck to the pool and above the filter element assembly, and in addition, providing a removable vacuum lid seatable upon the seat in the housing. Also, there is provided a vacuum outlet in the housing so that when the lid is seated, the skim filter will have the additional function of vacuuming the pool.

64.

The Pace patent was issued first and was issued to Robert M. Pace. The Cavenah improvement patent was subsequently issued to Landon, Inc., the assignee of the inventor, Cavenah.

65.

The Pace and Cavenah patents in suit together cover only a single article, namely, the improved filter (a combination of both the Pace and Cavenah inventions) shown in the Cavenah patent and its equivalents. Licensee under the Pace patent alone could not make, use or sell the Pace filter with the vacuuming improvement of the Cavenah patent since this would infringe the Cavenah patent. Likewise, a licensee under the Cavenah patent alone could not build the improved skim filter of the Cavenah patent without infringing the basic Pace patent.

66.

Landon, Inc. attempted to license manufacturers under its Cavenah patent alone but was unable to do so because the prospective licensees refused to take a license because the skim filters they would make under the Cavenah patent would be in conflict with the basic Pace patent which was held by Robert M. Pace.

67.

Upon advice of counsel, Robert M. Pace and Landon, Inc. entered into an agreement on November 15, 1928, whereby Robert M. Pace assigned his patent to Landon, Inc. and Landon, Inc. agreed to seek licensees under both the Pace and Cavenah patents.

68.

There is no provision in the agreement between Robert M. Pace and Landon, Inc. to restrict the number of licensees; to license only those of a certain class, or not to license others under these patents; but rather, Landon, Inc. was to attempt and did attempt to secure as many licensees under these patents as possible.

69.

Landon, Inc. thereafter offered licenses under both the Pace and Cavenah patents under uniform terms and conditions to all who wished licenses thereunder. There has been no discrimination or favoritism to any of the licensees or prospective licensees by Landon, Inc. Rather, the evidence shows clearly that all such licensees or pro-

spective licensees have been treated equally. Landon, Inc. never refused to license any manufacturer under the uniform terms offered to others. The terms and conditions of these license agreements are reasonable.

70.

As a result of the agreement between Robert M. Pace and Landon, Inc., the public has been able to receive the benefits of the Pace invention as well as the Cavenah improvement to the Pace invention.

71.

Neither Landon, Inc. nor Robert M. Pace intended or attempted to coerce anyone into taking a license under the patents in suit, but rather, all persons who were offered licenses under the patents in suit or who sought licenses under the patents in suit were free to accept or refuse such licenses as they desired.

72.

Landon, Inc., prior to the time it acquired title to the Pace patent, offered a license to Jacuzzi Bros. under the Cavenah patent alone (which was refused) but did not offer a license under both of the patents in suit to Jacuzzi Bros., since Jacuzzi Bros. initiated the present suit against Landon, Inc. before any such offer had been made. However, Jacuzzi Bros. did not seek and has not sought a license from Landon, Inc. under the patents in suit and has never been refused a license under the patents in suit by Landon, Inc.

73.

No one has ever sought a license from Landon, Inc. under the Pace patent alone or under the Cavenah patent alone since the agreement between Robert M. Pace and Landon, Inc. was entered into on November 15, 1958.

74.

Landon, Inc. has never refused to grant a license to anyone under the Pace patent alone or under the Cavenah patent alone.

75.

There is presently no commercial market or a desire on the part of the public for a skim filter built in accordance with the Pace disclosure alone without the addition of the vacuuming improvement shown in the Cavenah patent.

76.

Since the entering into of the agreement between Robert M. Pace and Landon, Inc., no one has manufactured and marketed a Pace skim filter without also adding thereto the Cavenah vacuuming improvement.

77.

The accused filter of Jacuzzi Bros. uses both the basic combination of the Pace patent and the vacuuming improvement of the Cavenah patent.

78.

At the time that the agreement between Robert M. Pace and Landon, Inc. was entered into, there were many

infringers of the patents in suit. Landon, Inc. attempted to stop infringement of the patents in suit by suing infringers, one at a time, depending upon the outcome of the first suit to guide the remaining infringers as to whether they would take a license or cease infringing.

79.

To insure that there would be funds available for policing of the patents in suit against infringement, the agreement entered into by Robert M. Pace and Landon, Inc. provided that the royalties received from licensees were to pass first through a trust fund and then to paid to Landon, Inc. and Pace. The money in the trust fund was to be used for litigation and other patent policing expenses. This provision prevented either party from refusing to share in the burden of policing and enforcing the patents for the protection of licensees.

80.

Each and every charge of infringement made by Landon, Inc. was made in good faith after thorough investigation of the accused structures.

81.

All suits brought by Landon, Inc. for infringement of the patents in suit were brought in good faith after thorough investigation of the accused structures.

82.

The counterclaim brought by Landon, Inc., against Jacuzzi Bros. for infringement of the patents in suit, was

brought in good faith by Landon, Inc. after thorough investigation of the accused devices made by Jacuzzi Bros.

83.

Subsequent to the outcome of prior suits brought by Landon, Inc. for infringement of the patents in suit, Landon, Inc. has informed the trade as to the outcome of said suits. Such notifications to the trade have not in any way enlarged upon or misrepresented the scope of the judgment or judgments in favor of Landon, Inc.

84.

Subsequent to the issuance of several licenses under the Pace and Cavanah patents in suit, Landon, Inc., with good cause believed that one of its licensees, without paying royalties, was supplying complete filter element assemblies to a non-licensee with knowledge that such non-licensee was incorporating these assemblies into an infringing filter on which no royalty was being paid. In order to put a stop to this, Landon, Inc. notified its licensees in good faith that any supplying of filter element assemblies or parts other than for replacement purposes by these licensees to unlicensed persons would violate the licenses and constitute contributory infringement. The filter elements or parts referred to in these notices were material elements of the patented combination and could not be used for any non-infringing use without making many substantial structural changes therein.

85.

The evidence shows clearly that neither Robert M. Pace nor Landon, Inc. has committed any acts of patent misuse.

86.

There has been no conspiracy between Landon, Inc. and Robert M. Pace to commit any wrongful act.

87.

There has been no intention on the part of Landon, Inc. or Robert M. Pace to extend the monopoly granted by the patents in suit beyond the limits granted by such patents.

88.

There has been no acts by Landon, Inc. or Robert M. Pace wherein the monopoly granted by the patents in suit has been extended beyond the limits granted by such patents.

89.

Neither Landon, Inc. nor Robert M. Pace have made any use whatsoever of the Pace and Cavenah patents in suit to suppress or control the sale of any staple article or commodity of commerce suitable for non-infringing use.

90.

In the license agreements between Landon, Inc. and its licensees under the patents in suit, there are no provisions whatsoever fixing prices or allocating territories.

91.

At no time has there been and there are not now any agreements or understandings between Landon, Inc. or

Robert M. Pace and any of the licensees under the patents in suit concerning the fixing of prices or the allocating of territories amongst the licensees.

92.

There has been no intent or attempt on the part of either Robert M. Pace or Landon, Inc. to establish or control prices at which the licensed skim filters were sold. To the contrary, the evidence shows clearly that the licensees under the patents in suit were in free and open competition with one another and with other manufacturers of similar devices and that the price at which each licensee sold said licensed filters was reasonable and was determined on an openly competitive basis with other licensees and with the manufacturers of competing filters.

93.

The license agreements whereby Landon, Inc. licensed manufacturers under the Pace and Cavenah patents in suit are to remain in effect until the expiration of the last to expire patent. Royalties under these license agreements are due on devices coming within the scope of any of the claims of either patent. I find it a fact that these license agreements require a licensee to pay royalties only on devices covered by a claim or claims of an unexpired patent, and do not require the payment of royalties on devices covered only by claims of an expired patent.

94.

There was no intent or attempt by either Robert M. Pace or Landon, Inc. to monopolize the skim filter indus-

try beyond the scope of the Pace and Cavenah patents by patent litigation or threats of patent litigation.

95.

There was no intent or attempt on the part of either Robert M. Pace or Landon, Inc. to use the Pace and Cavenah patents in suit to dominate or restrain the sale of skim filter devices which are outside the scope of said patents.

96.

The evidence shows clearly that neither Robert M. Pace nor Landon, Inc. have committed any acts which are in restraint of trade or commerce among the several states or with foreign nations, nor have either Robert M. Pace or Landon, Inc. committed any acts or attempted to commit any acts which would monopolize any part of the trade or commerce among the several states or with foreign nations which are not permitted by law.

97.

There has been no damage to Jacuzzi Bros. on account of any activities by Landon, Inc.

## CONCLUSIONS OF LAW

1.

This Court has jurisdiction of the subject matter and of the parties.

2.

Landon, Inc. is the owner of all of the right, title and interest in and to and under Letters Patent in suit Nos. 2,826,307 and 2,844,255.

*As to Validity*

3.

The claims of the Pace patent in suit particularly point out and distinctly claim the invention in full accordance with law and are good and valid in law.

4.

The claims of the Cavenah et al patent in suit particularly point out and distinctly claim the invention in full accordance with law and are good and valid in law.

5.

Under Title 35 U.S.C. § 282, the patents in suit are presumed to be valid and the burden of establishing invalidity rested on Jacuzzi Bros., and Jacuzzi Bros. failed to sustain that burden.

6.

The presumption of validity of the patents in suit in the present case is strengthened by the fact that the Patent Office considered the most pertinent prior art during the examination of the applications for the patents in suit.

7.

The presumption of validity of the patents in suit in the present case is strengthened by the fact that after full trial the patents in suit were adjudged to be valid by the United States District Court, for the Southern District of California (Judge Leon Yankwich) in Landon, Inc. v. Marine Swimming Pool Equipment Co., C. A. 480-60-Y (reported at 195 F. Supp. 41), in the trial of

which case the same and the most material and pertinent prior art and the same and the most material and pertinent evidence of alleged invalidity was introduced in evidence and considered in the suit at bar.

8.

Where, as in this case, the patented device has to a very marked degree superseded what had been used almost exclusively by the industry involved for many years, and tribute has been paid to the patent by all the leaders in the industry involved, such evidence is very persuasive evidence that the patents thereon are valid.

9.

Where, as in this case, the prior art offered in evidence and alleged to anticipate the patented inventions did not have the capabilities of performing the functions or accomplishing the results of the patented device unless reconstructed and given a new mode of operation in the light of the teachings of the patents in suit, such prior art is insufficient to invalidate the patents in suit.

10.

The fact, as in this case, that the patented inventions did not produce an entirely new or startling and unheard of ultimate result does not negativ invention in the patented device since, with respect to the result produced, it is not essential that it be a wholly new result but it is sufficient if an old result is effected in a more facile, economical or efficient way.

11.

The concept of the patents in suit of combining elements to form a filtering apparatus having a new modus operandi and which produces a new or improved result is patentable whether such elements are all old in the art or some are old and others are new; with respect to the result produced, it is not essential to patentability that it be a wholly new result, but it is sufficient if an old result is effected in a more facile, economical or efficient way.

12.

Where, as in this case, the inventions of the patents in suit were not obvious to a person having ordinary skill in the art at the time the inventions were made, evidence showing that after the inventions were disclosed and the patents were issued prior art devices could be modified by an engineer by changing their construction and mode of operation to conform to the new teachings of the patents in suit is insufficient evidence to invalidate the patents.

13.

The test for invention, as laid down in Title 35, U.S.C. § 103, is whether the patented subject matter would have been obvious to a person having ordinary skill in the art "at the time the invention was made" not what is obvious after the patent has issued.

14.

Where, as in this case, the invention of a patent was not obvious to a person having ordinary skill in the art

at the time the invention was made, evidence showing that it is easy after the patent has issued and the invention is disclosed, to select and assemble various parts from prior art patents and devices and achieve a nunc pro tunc solution of the problems confronting the inventor when he made the invention, is insufficient to invalidate a patent.

15.

Where, as in this case, the evidence shows that the concept of the inventions of the patents in suit escaped the experts of the industry involved for many years, although they solved a problem facing that industry for years, such evidence is cogent evidence of patentable invention, and the fact that the concepts were simple in nature does not negative patentable invention.

16.

The facts in this case, that there was a long standing want and demand, which was satisfied by the inventions of the patents in suit demonstrate the existence of patentable invention and the validity of the patents in suit.

17.

The Pace patent in suit No. 2,826,307 was regularly issued in accordance with law and each of the claims thereof is good and valid in law.

18.

The Cavenah et al. patent in suit No. 2,844,255 was regularly issued in accordance with law and each of the claims thereof is good and valid in law.

*As to Infringement*

19.

Having found as a fact that the Jacuzzi Bros. accused skim filters embody each and every element of the invention as claimed in the Pace patent claims 1 to 4, inclusive, or their full structural and functional equivalent, and that the accused skim filters have a mode of operation and function substantially the same as the claimed invention and produce the same result by substantially the same means as the claimed invention, I conclude that the two accused skim filters infringe each and every claim of the Pace patent in suit.

20.

Jacuzzi Bros. has infringed the Pace patent in suit by the manufacture and sale of the two accused "Crystal Flow" filters, Exhibits 25 and 26 in evidence.

20a.

The fact that Jacuzzi Bros. may have made an improvement and obtained a patent therefor does not excuse its infringement of the patents in suit.

21.

Having found as a fact that the Jacuzzi Bros. accused skim filters embody each and every element of the invention as claimed in the Cavenah patent claims 1 to 5, inclusive, or their full structural and functional equivalent, and that the accused skim filters have a mode of operation and function substantially the same as the claimed invention and produce the same result by substantially

the same means as the claimed invention, I conclude that the accused skim filters infringe each and every claim of the Cavenah patent in suit.

22.

Jacuzzi Bros. has infringed the Cavenah patent in suit by the manufacture and sale of the two accused "Crystal Flow" filters, Exhibits 25 and 26 in evidence.

23.

The infringement of the patents in suit by Jacuzzi Bros. was wilful, intentional and deliberate.

*As to Misuse, Unclean Hands and Antitrust Violation*

24.

Jacuzzi Bros. misuse and antitrust counterclaim and defenses of misuse and counterclaim are all based on allegations having no justification in fact, and no substantial evidence in support thereof was introduced at the trial.

25.

Landon, Inc. and Robert M. Pace have not used the patents in suit to restrict competition in violation of any law.

26.

Landon, Inc. and Robert M. Pace confined their activities concerning the patents in suit within the particular monopoly afforded by the patents in suit. Neither is Landon, Inc. nor Robert M. Pace guilty of violation of anti-

trust laws, unclean hands or misuse of the patents in suit, or any of them; accordingly, the Jacuzzi Bros. counterclaim should be dismissed.

27.

The evidence fails completely to establish any violation by Landon, Inc. of the Sherman Act or any other antitrust law.

28.

The evidence fails completely to establish any misuse by Landon, Inc. of the patents in suit.

29.

It is not patent misuse or a violation of the antitrust acts to bring in good faith a suit for patent infringement against an infringer and thereby cause the infringer to choose between defending the action, stopping the accused activities or accepting a license.

30.

Under the facts of the present case, the notification by Landon, Inc. to the trade of the results of prior litigation was proper and lawful and did not and does not constitute either patent misuse or a violation of any antitrust laws.

31.

It is an act of contributory infringement for a licensee under a combination patent to supply a material element of the patented combination to an unlicensed person who then incorporates such elements into an infringing device when such licensee knows that these material elements cannot be used for any non-infringing use without mak-

ing many substantial structural changes therein and when no royalty is paid to the licensor by either the licensee or the unlicensed person.

32.

The notification by Landon, Inc. to its licensees that the supplying of filter assemblies and parts therefor to a non-licensee for incorporation into an infringing structure was an act of contributory infringement and would violate the licenses and would subject the licensee to a suit for infringement was proper and lawful and did not constitute either an act of patent misuse or a violation of the antitrust laws.

33.

The bringing of infringement suits by Landon, Inc., one at a time, against the infringers of the patents in suit was proper and did not constitute either patent misuse or a violation of the antitrust laws.

34.

Infringement suits which are initiated to protect a lawful patent monopoly, and not as part of an over-all plan to eliminate or unlawfully control competition, do not constitute a misuse of the patents.

35.

Landon, Inc. litigation activities, past and present, have not and do not constitute unclean hands or misuse of the patents in suit.

36.

The establishment of the trust fund by the agreement of November 15, 1958, between Robert M. Pace and Lan-

don, Inc., whereby royalties received might be accumulated for legally policing and enforcing the patents in suit, was proper and did not constitute either patent misuse or a violation of the antitrust laws.

37.

The provisions in the licenses of the two patents in suit whereby the licenses are to expire at the expiration of the last-to-expire patent and wherein royalties are due on devices coming within the scope of any of the claims of either patent do not require the licensees to pay royalties for devices covered only by claims of an expired patent and therefore the provisions are proper and do not constitute either patent misuse or a violation of the antitrust laws.

38.

A license which, by its terms, continues until the expiration of all of the patents covered by such license, does not constitute a patent misuse, in the absence of a showing of coercion on the part of the patent owners that the licensee accede to such a provision.

39.

The licensing of several patents in a single license agreement does not constitute a patent misuse unless the element of coercion is present, such as where there has been a request by a prospective licensee for a license under less than all of the patents and a refusal by the licensor to grant such a license.

40.

Under the facts of the present case, the package licensing of the interlocking Pace and Cavenah patents in

suit by Landon, Inc., was and is proper and does not constitute either an act of patent misuse or a violation of the antitrust laws.

41.

Under the facts of the present case, the agreement by Robert M. Pace and Landon, Inc., for Landon, Inc. to license the interlocking Pace and Cavenah patents in suit, was and is proper and does not constitute either an act of patent misuse or a violation of the antitrust laws.

42.

Landon, Inc. licensing program and sales program, past and present, have not and do not constitute misuse of the patents in suit.

43.

The expense sustained by Jacuzzi Bros. as a result of the activities of Landon, Inc., namely, the amount spent by Jacuzzi Bros. in prosecuting this action against Landon, Inc., does not constitute such injury to business or property as will support the charge of antitrust violation made by Jacuzzi Bros.

44.

The traditional form of patent licensing followed by Robert M. Pace and/or Landon, Inc. does not constitute either patent misuse or a violation of the antitrust laws.

*As to the Judgment*

45.

Landon, Inc. is entitled to a Judgment,

(a) dismissing the Complaint and Counterclaim as being without merit;

(b) adjudging the two patents in suit and all the claims thereof to be good and valid in law;

(c) adjudging that Jacuzzi Bros. has infringed each of the claims of the two patents in suit by the manufacture and sale of the "Crystal Flow" skim filters;

(d) adjudging that Landon, Inc. is entitled to a Writ of Injunction, issuing out of and under the seal of this Court, enjoining and restraining Jacuzzi Bros., its officers, associates, attorneys, employees, servants and all those in privity with them, from in any manner manufacturing, using or selling or offering for sale skim filter devices coming within the scope of the claims of the patents in suit, Nos. 2,826,307 and 2,844,255;

(e) adjudging that Landon, Inc. is entitled to an accounting of its damages for the infringement from Jacuzzi Bros., in an amount equal to the profits realized by Jacuzzi Bros., by reason of its infringement, or a reasonable royalty for the use of the patents in suit, whichever is the greater;

(f) adjudging that the damages, when determined, be recovered by Landon, Inc. from Jacuzzi Bros., and that Landon, Inc. have execution therefor;

(g) adjudging that Landon, Inc. is entitled to its expense and cost of suit and that Landon, Inc. have execution therefor.

Dated: This 8 day of November, 1962.

George B. Harris,
United States District Judge.

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*In the United States District Court*
*Northern District of California*
*Southern Division*

Civil Action No. 38,754

| | |
|---|---|
| Landon, Inc., a corporation, Plaintiff<br>vs.<br>International Manufacturing Co., Inc., a corporation, and Rudolph Jacuzzi, an individual, Defendants. | Civil Action No. 38,754 |

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

## FINDINGS OF FACT

*The Parties*

1.

Landon, Inc., is a corporation of California and has a principal place of business at San Carlos, State of Cali-

fornia, within the Northern District of California, Southern Division.

2.

International Manufacturing Co., Inc., is a corporation of California, and has a principal place of business at Concord, State of California, within the Northern District of California, Southern Division.

3.

Rudolph Jacuzzi is an individual and a resident of Lafayette, State of California, within the Northern District of California, Southern Division, and is President and a Director of defendant International Manufacturing Co., Inc., and is the sole stockholder of said corporation.

4.

Rudolph Jacuzzi dominates, directs and controls the actions and manufacturing policies of defendant International Manufacturing Co., Inc., and is the person who actively directs and actually conducts the business of defendant International Manufacturing Co., Inc.

## AS TO VALIDITY

*The State of the Art*

5.

The Court finds, from the uncontradicted testimony in this case, that for more than ten years prior to the time of the invention disclosed in the patents in suit, there was available to the swimming pool industry, from a practical viewpoint, only a single type of pool filtering apparatus for pools other than relatively large commer-

cial pools. This apparatus was of the sand and gravel type requiring one but usually more than one relatively large tank containing sand and gravel, which tanks were positioned above ground thirty to sixty feet from the pool because of the deck space they required and because of their unsightly appearance. In addition to unsightliness, this type of filtering apparatus had a numb r of recognized disadvantages, among which were:

(a) the high cost of the filtering equipment and high cost of installation;

(b) this type of equipment required backwashing at regular intervals to clean the filter media, and each such backwashing required the use and waste of hundreds of gallons of water, and also required a sewer connection or equivalent disposal connection to the filter for the waste water disposal;

(c) high maintenance cost, particularly periodically when skilled labor was required to change the filter media;

(d) relatively short lived because the tanks (due to cost) had to be of ferrous metal, and rusting caused tanks to leak and require replacing;

(e) water from the pool (even when a weir throat was provided) necessarily traversed through restricting pipe directly into a pump before reaching the filter, thus causing the water from the pool to flow through a restricted orifice and presenting the hazard of clogged pipes and prematurely worn pumps because foreign matter, such as sand, lint and oils, traveled through the pipe and pump before being filtered.

6.

That for years the industry recognized the shortcomings and disadvantages of the sand and gravel filters and sought an answer to the problem, but the problem remained unsolved and the industry remained saddled with the costly and inefficient sand and gravel filters until the advent of the filter apparatus of the patents in suit.

7.

That at the time of the inventions there existed and was known a diatomaceous earth type of filter for large public type pools. This filter was of the general type shown in Exhibits AH and S and was far too costly to build and maintain to be used except in connection with relatively few and relatively large public pools.

*The Pace Patent in Suit No. 2,826,307*

8.

That the invention of the Pace patent produced a pool skim filter having a new mode of operation and producing new results, and producing the old ultimate result of filtering in a more facile, economical and efficient way, as follows:

(a) the invention produced a complete skimming and filtering device which could easily be positioned out of sight at pool side with only a relatively small deck plate (flush with the pool deck) being visible, thus not detracting from the decorative surroundings of the pool; this in contrast with the prior unsightly sand and gravel filters;

(b) by the invention, a complete skimming and filtering device was provided which was small and compact as well as being light in weight, thus enabling it to be delivered to the job in the trunk of an automobile and handled and installed easily by one man; this in contrast with the bulky heavy sand and gravel filters and over a ton of filter media requiring the use of a truck to deliver and at least two men to handle and install;

(c) by the invention, a complete skimming and filtering device was provided which could be positioned and cemented in place easily during the pouring or guniting of the pool; the prior sand and gravel filters required a separate concrete slab for mounting;

(d) by the invention, a complete skimming and filtering device was provided which could be purchased and installed at a cost from one-third to one-half less than that of a sand and gravel filter system of comparable capacity and filtering efficiency; for example, in systems of equivalent capacity, for one pool size, the cost of a sand and gravel system installed is $736.51 as against $389.10 for the system using the patented skim filter;

(e) by the invention, a complete skimming and filtering device was provided which requires no backwashing and no sewer or waste disposal connection as its filter can be removed by the pool owner and cleansed by washing off with a garden hose with something less than forty gallons of water; this in contrast with the use and waste of four hundred to one thousand gallons of water required to backwash a sand and gravel filter, the necessity of a sewer or equivalent connection to dispose of the wasted

water, and the replacement in the pool of the water wasted in backwashing;

(f) by the invention, a complete skimming and filtering device was provided which can be easily serviced by the pool owner even to the extent of replacing the entire filter element; all that is required when cleaning the filter is to remove the light, relatively small filter element through the top of the tank and wash it off with a garden hose and replace it; if a new filter element is required, it is only necessary to simply remove the old and lower a new one into the tank; this in contrast with the requirement of skilled labor and long hours of work in replacing the filter media in the sand and gravel type; and

(g) by the invention, the water to be filtered entering the skimmer flows completely unrestricted directly to the filter without traveling through a pipe or any restricted orifice, thus eliminating the possibility of pipe clogging; also, the water is filtered before reaching the circulating pump and this eliminates premature wear on the pump.

9.

The combination device of the Pace patent in suit has a mode of operation which is new in the art and the combining of the elements into the patented device, as taught by the patent, to produce this new mode of operation and the new, different and additional results, and to effect the old ultimate result of pool filtering in a more facile, economical and efficient way, was not obvious to persons having ordinary skill in the art at the time the invention was made.

10.

By combining the elements forming the patented skim filter in the novel manner taught by the Pace patent, every element coacts with every other element to produce new, additional and different functions and results which were new in the art, and to effect the old ultimate result of filtering of a swimming pool in a more facile, economical and efficient way, as set out in Finding of Fact No. 8.

11.

Although the solution, by the invention of the Pace patented device, to the problem confronting the industry seemed simple once it was disclosed by the inventor, it escaped the experts in the industry for over ten years and hence the Court finds that the patented apparatus involved invention not merely mechanical skill.

12.

Even though the skimming and filtering elements of the Pace patented combination are separately old in the filtering art [for example, separate skimmers are shown to be old in Exhibits D, F, K, AE, AI and King Patent No. 2,701,235, and filter elements per se are shown to be separately old in Exhibits L, M, N, P, Q, R, AF, and the patents to Fellows No. 1,989,795, Lowe British No. 557,393 (included in Exhibit A), and Townsend No. 2,507,126 (included in Exhibit 6)], the concept of combining these two separately old elements with a new element (the tank) in a manner enabling the water to be filtered entering the skimmer, to flow unrestricted to the

filter and thence to the pump, produced a skim filter having a new mode of operation producing new results, and the old ultimate result of pool filtering in a more economical, efficient and facile manner as set out in Finding of Fact No. 8, and this combination was not obvious to one skilled in the art at the time the invention was made and constituted invention.

13.

The prior King Patent No. 2,701,235 (included in Exhibit A) is pointed to by the defense as an anticipation of the Pace patent, the defense contending that this patent shows the combination of the Pace patent. The Court rejects this contention and finds as fact that the King patent disclosure necessarily requires, to accomplish its purpose, intersecting vertical and horizontal pipes (numbered 9 and 16 in the King patent drawing) between the separate skimmer and separate remotely placed filter tank. The construction of the King apparatus enables sand and like heavy debris entering the skimmer to drop back into the pool through pipe 16 (of the King drawing) and opening 33 (of the King drawing). The Court also finds as a fact that to reconstruct the King apparatus to meet the patented apparatus would:

(a) completely change the construction of the King apparatus as disclosed;

(b) completely change the mode of operation of the King apparatus as disclosed; and

(c) entirely transform the King concept.

14.

The apparatus of the King patent is incapable of producing the results of the Pace combination as set forth in Finding of Fact No. 8, and it is constructed and has a mode of operation materially different from the patented combination.

15.

The Cunliffe Patent (British No. 348,794) and the Iki Patent No. 1,245,721 (both included in Exhibit A) are so entirely and substantially different from the Pace patented combination, both in construction, mode of operation and results produced that any contention that they individually or collectively anticipate the Pace invention is completely without merit. The Cunliffe patent discloses a water circulating and screening system for swimming pools. The Iki device shows a water circulating and purifying tank for feed water systems for boilers, and neither is adapted for nor capable of operating in the manner of the patented skim filter nor capable of producing its results.

16.

The prior art books, AH, S and Y, disclose that broadly speaking "vacuum diatomite filters" were old in the art, but these prior filters are of no pertinency as anticipations of the inventions of the Pace patent in suit because these filters are not constructed nor do they operate in any fashion as does the apparatus of the Pace patent in suit, nor do these prior filters include (except broadly a filter) the elements of the Pace patented combination.

*The Cavenah Patent in Suit No. 2,844,255*

17.

The invention of the Cavenah Patent No. 2,844,255 in suit is the concept of providing the patented combination of the Pace Patent No. 2,826,307 with additional new elements to equip the Pace patented skim filter with the additional function or ability, which is to vacuum the bottom of the pool. The new elements include the vacuum intake below the weir throat, a shut-off plate seat between the weir throat and the vacuum intake, and a removable shut-off plate (removable both from the seat and tank) to seat on that seat and shut off the flow from the weir to the filter chamber to enable the pump to create a vacuum through the vacuum intake (to which a vacuum hose and fitting communicates) to draw the water directly into the filter chamber, through the filter element to the pump.

18.

The contribution of the Cavenah invention to the Pace combination was a valuable contribution to the art, and the combination claimed by the Cavenah patent has a new mode of operation and produces the old ultimate result of pool vacuuming in a more facile and efficient way.

19.

The combination device of the Cavenah patent in suit has a mode of operation which is new in the art, and the combining of the old elements and the new elements into the patented device, as taught by the patent to produce this new mode of operation and the new, different and

additional results, and to effect an old ultimate result in a more facile and efficient way, was not obvious to persons having ordinary skill in the art at the time the invention was made.

20.

By combining the old and new elements forming the apparatus of the Cavenah patent in suit, every element coacts with the remaining elements to produce new, additional and different functions and results which were new in the art, and to effect the old ultimate result of vacuuming a pool in a more facile, economical and efficient way.

21.

The prior King Patent No. 2,701,235, and the prior Cunliffe British Patent No. 348,794 (both included in Exhibit A) show means of vacuuming a pool. These prior patents do not disclose the combination disclosed and claimed in the Cavenah Patent No. 2,844,255 or an equivalent apparatus. In construction and mode of operation the Cavenah apparatus is substantially different from the King and Cunliffe disclosures and the latter do not anticipate the Cavenah invention.

22.

The Pace Patent No. 2,826,307 in suit, although prior to the Cavenah Patent No. 2,844,255 in suit, does not anticipate the Cavenah invention nor negative invention therein, in that the Pace combination does not include the new elements or the new functions of the Cavenah concept nor produce the new additional results of the Ca-

venah invention. Even in view of the Pace apparatus, the Cavenah invention was not obvious to one skilled in the art at the time the Cavenah invention was made.

*Immaterial Prior Art*

23.

That the patents to Greth No. 1,144,327, Test No. 1,917,614, Shawhan No. 2,167,466, Leslie No. 2,809,752, also offered in evidence (included in Exhibit A), are completely immaterial as anticipations of the Pace and Cavenah inventions in that they disclose circulating systems and apparatus completely foreign in construction and mode of operation to the patented combinations. The Pace Patent No. 2,900,079 is subsequent to the Pace and Cavenah patents in suit and consequently is not prior art.

*The Effect of the Inventions in the Industry*

24.

Commencing in the year 1956, when the patented filters were first made known, and extending to the year 1961, the ratio of sales in the areas into which the patented filters were introduced, as shown by the evidence, was 75% to 80% patented skim filters and 20% to 25% sand and gravel filters, and that during that period in excess of 22,000 of the patented skim filters were sold.

25.

That following the introduction of the patented skim filters, all of the acknowledged leaders in the swimming pool equipment industry, Paddock of California, National Pool Equipment Co., Swimquip, Inc., and Ryder-

Elliott, Inc., paid tribute to the inventions by taking licenses under the patents in suit and paying royalties for the use of the inventions.

*Prior Art Previously Considered*

26.

That the best and most pertinent prior art relied upon at the trial as invalidating the patents in suit was before and considered by the United States Patent Office during the examination of the applications for the patents in suit.

27.

That the best and most pertinent prior art relied upon at this trial as invalidating the patents in suit was previously in evidence and before the United States District Court for the Southern District of California in Civil Action No. 480-60-Y, known as "Landon, Inc., v. Marine Swimming Pool Equipment Co.," in which previous action the present patents in suit were adjudged to be valid.

AS TO INFRINGEMENT

*The Pace Patent*

28.

The Pace patented skim filter and the accused International Manufacturing Co., Inc. device both comprise essentially a substantially cylindrical filter housing (sometimes called a tank) adapted to be mounted adjacent a swimming pool with its upper end above the normal

water level of the pool and flush with the pool deck and with its lower end below the water level in the pool. The housing is formed with a substantially horizontally extending neck forming a water passage between the housing and the pool. A buoyant weir is disposed in the lateral neck to perform a skimming function on the water entering the filter housing from the pool. The housing is fitted with a socket in the bottom thereof and a hollow core is releasably fitted to the socket member. A plurality of disc-like filter elements are mounted concentrically on the core and a screen basket is removably positioned within the housing below the liquid level therein and above the uppermost of the filter elements. A handle is mounted on the upper end of the core whereby the core and filter elements may be removed from the housing through its open upper end for cleaning. In operation of the patented and the accused device, the surface water in the pool flows over the top of the buoyant weir and into the filter housing. The water then passes through the cloth covering of the disc-like filter elements and the core and then through the pump and returned to the pool.

29.

The elements of the Pace skim filter shown in the Pace patent all find full, complete and exact correspondence in the structure of the accused International Manufacturing Co., Inc. device.

30.

The skim filter shown in the Pace patent and the accused skim filter of International Manufacturing Co., Inc.

both operate exactly the same way by the same means to accomplish exactly the same result.

31.

International Manufacturing Co., Inc. concedes that it has no defense of non-infringement with respect to claim 2 of the Pace patent in suit and this Court so finds.

32.

The contention of International Manufacturing Co., Inc. to the effect that it does not infringe claim 1 of the Pace patent is untenable. Claim 1 of this patent requires, inter alia, (1) that the screen leaf basket be mounted concentrically on the core, and (2) that the handle which is mounted on the upper end of the core be integrally related to the basket. Although the accused skim filter of International Manufacturing Co., Inc. contains a basket which is not mounted on the core and which is not integrally related or connected to the core, these are immaterial variations and although there is this variance in the shape and form of the accused device from the device shown in the Pace patent, nevertheless I find that the leaf basket and handle of the accused device to be the full structural, mechanical and functional equivalent of the basket and handle shown and claimed in the Pace patent in suit.

33.

The position of International Manufacturing Co., Inc. that it does not infringe claim 3 of the Pace patent is untenable. Claim 3 of the Pace patent requires, inter alia, (1) that the filter housing be in the form of an elongated

cylinder of uniform diameter throughout its length; (2) that the basket be supported by the upper end of the core, and (3) that the basket be of a diameter less than the transverse dimension of the uniform diametered housing. Although the filter housing of the accused skim filter of International Manufacturing Co., Inc. has a slight taper so as to have a smaller diameter at the lower end and a larger diameter at the upper end, I find that this variance from the patented filter is immaterial. The slight taper of the housing of the accused device results from manufacturing requirements in the manufacture of moulded devices and does not affect in any way the operation of the complete skim filter. The filtering operation of the accused device is exactly that of the Pace patented device. Therefore, I find the housing of the International Manufacturing Co., Inc. skim filter to be the full mechanical, structural and functional equivalent of the housing shown and claimed in the Pace patent. The accused International Manufacturing Co., Inc. skim filter also has a shoulder for the support of the leaf basket. I find that this shoulder support of the accused skim filter is the full mechanical, structural and functional equivalent of the basket support shown and claimed in the Pace patent.

34.

The position of International Manufacturing Co., Inc. that it does not infringe claim 4 of the Pace patent is untenable. Claim 4 of the Pace patent requires, inter alia, (1) that the filter housing be in the form of a cylinder of uniform diameter throughout its length, and (2) that the basket be of a diameter less than the transverse

dimension of the uniform diametered housing. Although the housing of the accused International Manufacturing Co., Inc. skim filter is not in the form of a cylinder of completely (but substantially) uniform diameter throughout its length due to the slight taper thereof to facilitate its manufacture, and even though the basket employed in the accused skim filter is not of a diameter less than a single and constant diameter of the housing, nevertheless I find that the housing of the accused skim filter is the full mechanical, structural and functional equivalent of the housing shown in the Pace patent. I also find that the basket used in the accused skim filter is of a diameter less than the diameter of the housing at the place where the basket is to be located so that it may fit within the housing and be removed therefrom and is the full structural, mechanical and functional equivalent of the leaf basket shown and claimed in the Pace patent in suit.

*The Cavenah Patent*

35.

The Cavenah patent discloses the entire combination shown in the Pace patent as set out in Finding No. 1, but, in addition, adds an interior circumscribing shoulder or seat in the housing intermediate the inlet neck and the filter element assembly. A removable shut-off vacuum lid is provided to be removably seated on the said shoulder to effect a vacuum pull from the pump through the filter element assembly and a vacuum outlet to the pool. The latter may be in the vacuum lid or in the side of the container. The patent discloses such connection in both places.

36.

The elements of the Cavenah filter added to the Pace filter, as set out in the previous finding of fact and as shown in the Cavenah patent in suit and as set forth in the Cavenah patent claims, each find full and complete correspondence in the accused skim filters made by International Manufacturing Co., Inc., both structurally and functionally.

37.

The Cavenah vacuuming elements disclosed in the Cavenah patent in suit and the vacuuming elements of the accused skim filters made by International Manufacturing Co., Inc., all function exactly the same way by the same construction to accomplish exactly the same result. In each case, when the removable vacuum cover has been removed, the filters operate to perform a skimming and filtering function, exactly as described above in connection with the Pace patent. When the removable vacuum cover is put in place, the normal flow of water from the surface of the pool over the weir and to the filter elements is cut off. Instead, flow can then take place through a vacuum cleaner attachment which is connected to deliver water to the filter housing below the removable vacuum cover, exactly as described above in connection with the Cavenah patent. The vacuum cleaner attachment may then be used to clean the sides or bottom of the pool.

38.

International Manufacturing Co., Inc. concedes that it has no defense of non-infringement with regard to claims 1 and 4 of the Cavenah patent in suit and this Court so finds.

39.

The position of International Manufacturing Co., Inc., that it does not infringe claim 2 of the Cavenah patent because the specific details called for in such claim are not found in the accused skim filter, is untenable, inasmuch as I find that every detail of claim 2 finds its full mechanical, structural and functional equivalent in the accused skim filter made by International Manufacturing Co., Inc.

40.

The contention of International Manufacturing Co., Inc., that claims 3 and 5 are incomplete is untenable. When the Cavenah device is being used with the vacuum lid in place for performing a vacuum operation, the Cavenah skim filter does not perform a skimming operation and the skimming weir does not then cooperate with the elements which do carry out the vacuuming operation. I find that the elements set forth in claims 3 and 5 are complete in describing a device which can perform a vacuuming operation.

41.

I find that claims 3 and 5 of the Cavenah patent read directly on the accused skim filter made by International Manufacturing Co., Inc.

42.

Landon, Inc. offered a license under the Pace and Cavenah patents in suit to defendant, International Manufacturing Co., Inc., upon the same terms and conditions as contained in the other licenses of the patents in suit.

This offer to International Manufacturing Co., Inc. was made prior to the institution of the present suit and was refused by International Manufacturing Co., Inc.

43.

International Manufacturing Co., Inc. continued its infringement of the patents in suit after it received notice of infringement from Landon, Inc., and after Judge Yankwich, in the case of Landon, Inc. v. Marine Swimming Pool Equipment Co., C. A. 480-60-Y, Southern District of California, Central Division, held the patents here in suit valid and even after this Court held the said patents valid.

44.

That Landon, Inc. commenced the manufacture and sale (before the patents issued) of the patented filters in late 1955 and they were sold in the very first part of 1956. Following the early marketing by Landon, Inc., International Manufacturing Co., Inc. and Rudolph Jacuzzi produced and sold the accused filters, and I find as a fact that the production of the accused devices by International Manufacturing Co., Inc. and Rudolph Jacuzzi was prompted by the appearance of the patented filters and with full knowledge of their construction and mode of operation and were not independently conceived by International Manufacturing Co., Inc. or Rudolph Jacuzzi.

45.

The infringement of the patents in suit by International Manufacturing Co., Inc. and Rudolph Jacuzzi was wilful, intentional and deliberate.

46.

That Landon, Inc. properly marked the patented filters produced by it in accordance with the requirement of the applicable statute 35 U. S. C. 287.

47.

International Manufacturing Co., Inc. and Rudolph Jacuzzi admitted, in their Amended Answer to the Amended Complaint, both on file herein, and the Court so finds, that defendant, Rudolph Jacuzzi, is the sole stockholder of defendant, International Manufacturing Co., Inc., and is the President and a director of said defendant, International Manufacturing Co., Inc.; that defendant, Rudolph Jacuzzi, dominates, directs and controls the actions and manufacturing policies of said defendant, International Manufacturing Co., Inc.; that defendant, Rudolph Jacuzzi, is the person who actively directs and actually conducts the business of defendant, International Manufacturing Co. Inc.; and this Court further finds that Rudolph Jacuzzi directed the manufacture and sale of the accused International Manufacturing Co., Inc. skim filter.

AS TO MISUSE AND ANTITRUST LAW VIOLATION

48.

The Pace and Cavenah patents in suit are interlocking patents. The Pace patent discloses the general combination of a filter housing having a horizontal neck extending to and communicating with the pool. A weir is disposed in the neck to perform a skimming operation

and a filter element disposed in the housing below the level of the neck to receive and filter the water entering the housing. The Cavenah patent covers an improvement thereon, namely, forming a peripheral seat in the housing below the inlet neck to the pool and above the filter element assembly, and in addition, providing a removable vacuum lid seatable upon the seat in the housing. Also there is provided a vacuum outlet in the housing so that when the lid is seated, the skim filter will have the additional function of vacuuming the pool.

49.

The Pace patent was issued first and was issued to Robert M. Pace. The Cavenah improvement patent was subsequently issued to Landon, Inc., the assignee of the inventor Cavenah.

50.

The Pace and Cavenah patents in suit together cover only a single article, namely, the improved filter (a combination of both the Pace and Cavenah inventions) shown in the Cavenah patent and its equivalents. A licensee under the Pace patent alone could not make, use or sell the Pace filter with the vacuuming improvement of the Cavenah patent since this would infringe the Cavenah patent. Likewise, a licensee under the Cavenah patent alone cannot build the improved skim filter of the Cavenah patent without infringing the basic Pace patent.

51.

Landon, Inc. attempted to license manufacturers under its Cavenah patent alone but was unable to do so because

the prospective licensees refused to take a license because the skim filters they would make under the Cavenah patent would be in conflict with the basic Pace patent which was held by Robert M. Pace.

52.

Upon advice of counsel, Robert M. Pace and Landon, Inc. entered into an agreement on November 15, 1958, whereby Robert M. Pace assigned his patent to Landon, Inc. and Landon, Inc. agreed to seek licensees under both the Pace and Cavenah patents.

53.

There is no provision in the agreement between Robert M. Pace and Landon, Inc. to restrict the number of licensees, to license only those of a certain class, or not to license others under these patents, but rather, Landon, Inc. was to attempt and did attempt to secure as many licensees under these patents as possible.

54.

Landon, Inc. thereafter offered licenses under both the Pace and Cavenah patents under uniform terms and conditions to all who wish licenses thereunder. There has been no discrimination or favoritism to any of the licensees or prospective licensees by Landon, Inc. Rather, the evidence shows clearly that all such licensees or prospective licensees have been treated equally. Landon, Inc. never refused to license any manufacturer under the uni-

form terms offered to others. The terms and provisions of these license agreements are reasonable.

55.

As a result of the agreement between Robert M. Pace and Landon, Inc., the public has been able to receive the benefits of the Pace invention as well as the Cavenah improvement to the Pace invention.

56.

Neither Landon, Inc. nor Robert M. Pace intended or attempted to coerce anyone into taking a license under the patents in suit, but rather, all persons who were offered licenses under the patents in suit or who sought licenses under the patents in suit were free to accept or refuse such licenses as they desired.

57.

Landon, Inc., after it acquired title to the Pace patent, offered a license to International Manufacturing Co., Inc. under both the Pace and Cavenah patents (which was refused). However, International Manufacturing Co., Inc. did not seek and has not sought a license from Landon, Inc. under the patents in suit and has never been refused a license under the patents in suit by Landon, Inc.

58.

No one has ever sought a license from Landon, Inc. under the Pace patent alone or under the Cavenah patent alone since the agreement between Robert M. Pace and Landon, Inc. was entered into on November 15, 1958.

59.

Landon, Inc. has never refused to grant a license to anyone under the Pace patent alone or under the Cavenah patent alone.

60.

There is presently no commercial market or a desire on the part of the public for a skim filter built in accordance with the Pace disclosure alone without the addition of the vacuuming improvement shown in the Cavenah patent.

61.

Since the entering into of the agreement between Robert M. Pace and Landon, Inc. no one has manufactured and marketed a Pace skim filter without also adding thereto the Cavenah vacuuming improvement.

62.

The accused filter of International Manufacturing Co., Inc. uses both the basic combination of the Pace patent and the vacuuming improvement of the Cavenah patent.

63.

At the time that the agreement between Robert M. Pace and Landon, Inc. was entered into, there were many infringers of the patents in suit. Landon, Inc. attempted to stop infringement of the patents in suit by suing infringers, one at a time, depending upon the outcome of the first suit to guide the remaining infringers as to whether they would take a license or cease infringing.

64.

To insure that there would be funds available for policing of the patents in suit against infringement, the agreement entered into by Robert M. Pace and Landon, Inc. provided that the royalties received from licensees were to pass first through a trust fund and then be paid to Landon, Inc. and Pace. The money in the trust fund was to be used for litigation and other patent policing expenses. This provision prevented either party from refusing to share in the burden of policing and enforcing the patents for the protection of licensees.

65.

Each and every charge of infringement made by Landon, Inc. was made in good faith after thorough investigation of the accused structures.

66.

All suits brought by Landon, Inc. for infringement of the patents in suit were brought in good faith after thorough investigation of the accused structures.

67.

The Complaint brought by Landon, Inc. against International Manufacturing Co., Inc. and Rudolph Jacuzzi for infringement of the patents in suit was brought in good faith by Landon, Inc. after thorough investigation of the accused devices made by International Manufacturing Co., Inc.

68.

Subsequent to the outcome of prior suits brought by Landon, Inc. for infringement of the patents in suit, Landon, Inc. has informed the trade as to the outcome of said suits. Such notification to the trade has not in any way enlarged upon or misrepresented the scope of the judgment or judgments in favor of Landon, Inc.

69.

Subsequent to the issuance of several licenses under the Pace and Cavenah patents in suit, Landon, Inc. with good cause believed that one of its licensees, without paying royalties, was supplying complete filter element assemblies to a non-licensee with knowledge that such non-licensee was incorporating these assemblies into an infringing filter on which no royalty was being paid. In order to put a stop to this, Landon, Inc. notified its licensees in good faith that any supplying of filter element assemblies or parts other than for replacement purposes by these licensees to unlicensed persons would violate the licenses and constitute contributory infringement. The filter elements or parts referred to in these notices were material elements of the patented combination and could not be used for any non-infringing use without making many substantial structural changes therein.

70.

The evidence shows clearly that neither Robert M. Pace nor Landon, Inc. has committed any acts of patent misuse.

71.

There has been no conspiracy between Landon, Inc. and Robert M. Pace to commit any wrongful act.

72.

There has been no intention on the part of Landon, Inc. or Robert M. Pace to extend the monopoly granted by the patents in suit beyond the limits granted by such patents.

73.

There have been no acts by Landon, Inc. or Robert M. Pace wherein the monopoly granted by the patents in suit has been extended beyond the limits granted by such patents.

74.

Neither Landon, Inc. nor Robert M. Pace has made any use whatsoever of the Pace and Cavenah patents in suit to suppress or control the sale of any staple article or commodity of commerce suitable for non-infringing use.

75.

In the license agreements between Landon, Inc. and its licensees under the patents in suit, there are no provisions whatsoever fixing prices or allocating territories.

76.

At no time has there been and there are not now any agreements or understandings between Landon, Inc. or Robert M. Pace and any of the licensees under the pat-

ents in suit concerning the fixing of prices or the allocating of territories amongst the licensees.

77.

There has been no intent or attempt on the part of either Robert M. Pace or Landon, Inc. to establish or control prices at which the licensed skim filters were sold. To the contrary, the evidence shows clearly that the licensees under the patents in suit were in free and open competition with one another and with other manufacturers of similar devices and that the price at which each licensee sold said licensed filters was reasonable and was determined on an openly competitive basis with other licensees and with the manufacturers of competing filters.

78.

The license agreements whereby Landon, Inc. licensed manufacturers under the Pace and Cavenah patents in suit are to remain in effect until the expiration of the last to expire patent. Royalties under these license agreements are due on devices coming within the scope of any of the claims of either patent. I find it a fact that these license agreements require a licensee to pay royalties only on devices covered by a claim or claims of an unexpired patent, and do not require the payment of royalties on devices covered only by claims of an expired patent.

79.

There was no intent or attempt by either Robert M. Pace or Landon, Inc. to monopolize the skim filter indus-

try beyond the scope of the Pace and Cavenah patents by patent litigation or threats of patent litigation.

80.

There was no intent or attempt on the part of either Robert M. Pace or Landon, Inc. to use the Pace and Cavenah patents in suit to dominate or restrain the sale of skim filter devices which are outside the scope of said patents.

81.

The evidence clearly shows that neither Robert M. Pace nor Landon, Inc. has committed any acts which are in restraint of trade or commerce among the several states or with foreign nations, nor has either Robert M. Pace or Landon, Inc. committed any acts or attempted to commit any acts which would monopolize any part of the trade or commerce among the several states or with foreign nations which are not permitted by law.

82.

There has been no damage to International Manufacturing Co., Inc. or Rudolph Jacuzzi on account of any activities by Landon, Inc.

## CONCLUSIONS OF LAW

1.

That this Court has jurisdiction of the subject matter and of the parties.

2.

That LANDON, INC. is the sole owner of all of the right, title and interest in and to and under Letters Patent in suit Nos. 2,826,307 and 2,844,255.

*As to Validity*

3.

That the claims of the Pace patent in suit particularly point out and distinctly claim the invention in full accordance with law and are good and valid in law.

4.

That the claims of the Cavenah et al. patent in suit particularly point out and distinctly claim the invention in full accordance with law and are good and valid in law.

5.

Under Title 35 U.S.C. § 282, the patents in suit are presumed to be valid and the burden of establishing invalidity rested on defendants and the defendants failed to sustain that burden.

6.

The presumption of validity of the patents in suit in the present case is strengthened by the fact that the Patent Office considered the most pertinent prior art

during the examination of the application for the patents in suit.

7.

The presumption of validity of the patents in suit in the present case is strengthened by the fact that after full trial the patents in suit were adjudged to be valid by the United States District Court, for the Southern District of California (Judge Leon Yankwich) in Landon, Inc. v. Marine Swimming Pool Equipment Co., C. A. 480-60-Y (reported at 195 F. Supp. 41), in the trial of which case the same and the most material and pertinent prior art and the same and the most material and pertinent evidence of alleged invalidity was introduced in evidence and considered by the Court as was introduced in evidence and considered in the suit at bar.

8.

Where, as in this case, the patented device has to a very marked degree superseded what had been used almost exclusively by the industry involved for many years, and tribute has been paid to the patent by all the leaders in the industry involved, such evidence is very persuasive evidence that the patents thereon are valid.

9.

Where, as in this case, the prior art offered in evidence and alleged to anticipate the patented inventions did not have the capabilities of performing the functions or accomplishing the results of the patented device unless reconstructed and given a new mode of operation in the

light of the teachings of the patents in suit, such prior art is insufficient to invalidate the patents in suit.

10.

The fact, as in this case, that the patented inventions did not produce an entirely new or startling and unheard of ultimate result does not negative invention in the patented device since, with respect to the result produced, it is not essential that it be a wholly new result but it is sufficient if an old result is effected in a more facile, economical or efficient way.

11.

The concept of the patents in suit of combining elements to form a filtering apparatus having a new modus operandi and which produces a new or improved result is patentable whether such elements are all old in the art or some are old and others are new; with respect to the result produced, it is not essential to patentability that it be a wholly new result, but it is sufficient if an old result is effected in a more facile, economical or efficient way.

12.

Where, as in this case, the inventions of the patents in suit were not obvious to a person having ordinary skill in the art at the time the inventions were made, evidence showing that after the inventions were disclosed and the patents were issued prior art devices could be modified by an engineer by changing their construction and mode of operation to conform to the new teachings

of the patents in suit is insufficient evidence to invalidate the patents.

13.

The test for invention, as laid down in Title 35, U. S. C. § 103, is whether the patented subject matter would have been obvious to a person having ordinary skill in the art "at the time the invention was made" not what is obvious after the patent has issued.

14.

Where, as in this case, the invention of a patent was not obvious to a person having ordinary skill in the art at the time the invention was made, evidence showing that it is easy after the patent has issued and the invention is disclosed to select and assemble various parts from prior art patents and devices and achieve a nunc pro tunc solution of the problems confronting the inventor when he made the invention, is insufficient to invalidate a patent.

15.

Where, as in this case, the evidence shows that the concept of the inventions of the patents in suit escaped the experts of the industry involved for many years, although they solved a problem facing that industry for years, such evidence is cogent evidence of patentable invention, and the fact that the concepts were simple in nature does not negative patentable invention.

16.

The facts in this case, that there was a long standing want and demand, which were satisfied by the inventions

of the patents in suit, demonstrate the existence of patentable invention and the validity of the patents in suit.

17.

That the Pace patent in suit No. 2,826,307 was regularly issued in accordance with law and it and each of the claims thereof are good and valid in law.

18.

The Cavenah et al patent in suit No. 2,844,255 was regularly issued in accordance with law and it and each of the claims thereof are good and valid in law.

*As to Infringement*

19.

In that the accused International Manufacturing Co., Inc. skim filter is a substantial duplicate of the disclosure of the Pace patent in suit and includes every element thereof and differs in construction therefrom only in immaterial respects and has the same mode of operation and produces the same results by substantially the same means as the claimed invention, such accused International Manufacturing Co.. Inc. skim filter infringes each and every claim of the Pace patent in suit.

20.

In that the accused International Manufacturing Co., Inc., skim filter is a substantial duplicate of the disclosure of the Cavenah patent in suit and includes every element thereof and differs in construction therefrom only in immaterial respects and has the same mode of operation and produces the same results by substantially the same means as the claimed invention, such accused International

Manufacturing Co., Inc. skim filter infringes each and every claim of the Cavenah patent in suit.

*As to Personal Liability of Rudolph Jacuzzi*

21.

In that Rudolph Jacuzzi was the sole stockholder, President and general manager of the International Manufacturing Co., Inc., in personal control thereof and acted as its guiding spirit and the active directing head in full charge of its operations, he is personally liable for the acts of infringement carried on by the defendant, International Manufacturing Co., Inc. That International Manufacturing Co., Inc. is the alter ego of Rudolph Jacuzzi.

22.

The infringement of the patents in suit by International Manufacturing Co., Inc. and Rudolph Jacuzzi was wilful, intentional and deliberate.

*As to Misuse and Antitrust Counterclaim*

23.

International Manufacturing Co., Inc. and Rudolph Jacuzzi misuse and antitrust counterclaim and defenses are all based on allegations having no justification in fact, and no substantial evidence in support thereof was introduced at the trial.

24.

Landon, Inc. and Robert M. Pace have not used the patents in suit to restrict competition in violation of any law.

25.

Landon, Inc. and Robert M. Pace confined their activities concerning the patents in suit within the particular monopoly afforded by the patents in suit. Neither is Landon, Inc. nor Robert M. Pace guilty of violation of antitrust laws, unclean hands or misuse of the patents in suit, or either of them; accordingly, the International Manufacturing Co., Inc. and Rudolph Jacuzzi counterclaim should be dismissed.

26.

The evidence fails completely to establish any violation by Landon, Inc. of the Sherman Act or any other antitrust law.

27.

The evidence fails completely to establish any misuse by Landon, Inc. of the patents in suit.

28.

It is not patent misuse or a violation of the antitrust laws to bring in good faith a suit for patent infringement against an infringer and thereby cause the infringer to choose between defending the action, stopping the accused activities or accepting a license.

29.

Under the facts of the present case, the notification by Landon, Inc. to the trade of the results of prior litigation was proper and lawful and did not and does not constitute either patent misuse or a violation of any antitrust laws.

30.

It is an act of contributory infringement for a licensee under a combination patent to supply a material element of the patented combination to an unlicensed person who then incorporates such elements into an infringing device when such licensee knows that these material elements cannot be used for any non-infringing use without making many substantial structural changes therein and when no royalty is paid to the licensor by either the licensee or the unlicensed person.

31.

The notification of Landon, Inc. to its licensees that the supplying of filter assemblies and parts therefor to a non-licensee for incorporation into an infringing structure was an act of contributory infringement and would violate the licenses and would subject the licensee to a suit for infringement was proper and lawful and did not constitute either an act of patent misuse or a violation of the antitrust laws.

32.

The bringing of infringement suits by Landon, Inc., one at a time, against the infringers of the patents in suit was proper and did not constitute either patent misuse or a violation of the antitrust laws.

33.

Infringement suits which are initiated to protect a lawful patent monopoly, and not as part of an over-all plan to eliminate or unlawfully control competition, do not constitute a misuse of the patents.

34.

Landon, Inc. litigation activities, past and present, have not and do not constitute unclean hands or misuse of the patents in suit.

35.

The establishment of the trust fund by the agreement of November 15, 1958, between Robert M. Pace and Landon, Inc., whereby royalties received might be accumulated for legally policing and enforcing the patents in suit, was proper and did not constitute either patent misuse or a violation of the antitrust laws.

36.

The provisions in the licenses of the two patents in suit whereby the licenses are to expire at the expiration of the last-to-expire patent and wherein royalties are due on devices coming within the scope of any of the claims of either patent do not require the licensees to pay royalties for devices covered only by claims of an unexpired patent and therefore the provisions are proper and do not constitute either patent misuse or a violation of the antitrust laws.

37.

A license which, by its terms, continues until the expiration of all of the patents covered by such license, does not constitute a patent misuse, in the absence of a showing of coercion on the part of the patent owners that the licensee accede to such a provision.

38.

The licensing of several patents in a single license agreement does not constitute a patent misuse unless the element of coercion is present, such as where there has been a request by a prospective licensee for a license under less than all of the patents and a refusal by the licensor to grant such a license.

39.

Under the facts of the present case, the package licensing of the interlocking Pace and Cavenah patents in suit by Landon, Inc. was and is proper and does not constitute either an act of patent misuse or a violation of the antitrust laws.

40.

Under the facts of the present case, the agreement by Robert M. Pace and Landon, Inc., for Landon, Inc. to license the interlocking Pace and Cavenah patents in suit, was and is proper and does not constitute either an act of patent misuse or a violation of the antitrust laws.

41.

Landon, Inc. licensing program and sales program, past and present, have not and do not constitute misuse of the patents in suit.

42.

The expense sustained by International Manufacturing Co., Inc. and Rudolph Jacuzzi as a result of the activities of Landon, Inc., namely, the amount spent by International Manufacturing Co., Inc. and Rudolph Jacuzzi in

prosecuting this action against Landon, Inc., does not constitute such injury to business or property as will support the charge of antitrust violation made by International Manufacturing Co., Inc. and Rudolph Jacuzzi.

43.

The traditional form of patent licensing followed by Robert M. Pace and/or Landon, Inc. does not constitute either patent misuse or a violation of the antitrust laws.

44.

*As to the Judgment*

Landon, Inc. is entitled to a Judgment,

(a) dismissing the counterclaim as being without merit;

(b) adjudging the two patents in suit and all the claims thereof to be good and valid in law;

(c) adjudging that International Manufacturing Co., Inc. and Rudolph Jacuzzi have infringed each of the claims of the two patents in suit by the manufacture and sale of International Manufacturing Co., Inc. skim filters;

(d) adjudging that Landon, Inc. is entitled to a Writ of Injunction, issuing out of and under the seal of this Court, enjoining and restraining International Manufacturing Co., Inc. and Rudolph Jacuzzi, its and their officers, associates, attorneys, employees, servants and those in privity with International Manufacturing Co., Inc. and Rudolph Jacuzzi, from in any manner manufacturing, using or selling or offering for sale skim filter devices coming within the scope

of the claims of the patents in suit, Nos. 2,826,307 and 2,844,255;

(e) adjudging that Landon, Inc. is entitled to an accounting of its damages for the infringement from International Manufacturing Co., Inc. and Rudolph Jacuzzi in an amount equal to the profits realized by International Manufacturing Co., Inc. and Rudolph Jacuzzi by reason of their infringement, or a reasonable royalty for the use of the patents in suit, whichever is the greater;

(f) adjudging that the damages, when determined, be recovered by Landon, Inc. from International Manufacturing Co., Inc. and Rudolph Jacuzzi, jointly and severally, and that Landon, Inc. have execution therefor;

(g) adjudging that Landon, Inc. is entitled to its expense and cost of suit and have execution therefor.

Dated: This 8 day of November, 1962.

George B. Harris
United States District Judge

## Appendix D

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*In the United States District Court*
*Northern District of California*
*Southern Division*

Civil Action No. 38,871

| | |
|---|---|
| Jacuzzi Bros., a corporation, Plaintiff, vs. Landon, Inc., a corporation, Defendant. | Civil Action No. 38,871 |

### JUDGMENT

This cause, having come on for trial before this Court, witnesses for both sides having been heard, documentary and physical exhibits having been received in evidence, briefs having been filed and oral argument having been made, and the Court having made its Findings of Fact and Conclusions of Law

It Is Hereby Ordered, Adjudged and Decreed, as Follows:

I.

That this Court has jurisdiction of this cause and of the parties.

II.

That Landon, Inc., is a corporation of the State of California, having a principal place of business at San Carlos, California.

III.

That Jacuzzi Bros., is a corporation of the State of California, having a principal place of business in Richmond, California.

IV.

That Landon, Inc., is the sole owner of the Pace Patent in suit No. 2,826,307.

V.

That Landon, Inc., is the sole owner of the Cavenah et al. Patent in suit No. 2,844,255.

VI.

That the Pace Patent in suit No. 2,826,307 and each of the claims thereof is good and valid in law.

VII.

That the Cavenah et al. Patent in suit No. 2,844,255 and each of the claims thereof is good and valid in law.

VIII.

That Jacuzzi Bros. has infringed each of the claims of Patents Nos. 2,826,307 and 2,844,255 in suit by the manufacture and sale of skim filters.

IX.

That a Writ of Injunction issue out of and under the seal of this Court, enjoining and restraining Jacuzzi Bros., its officers, associates, attorneys, employees, servants and those in privity with Jacuzzi Bros., from in any manner manufacturing, using or selling or offering for sale skim filter devices coming within the scope of the claims of Patents Nos. 2,826,307 and 2,844,255.

X.

That this matter shall be referred to Donald Constine to act as a Master to make and render an accounting as to the extent of the manufacture and sale of infringing skim filter devices by Jacuzzi Bros., and the amount of damages suffered by Landon, Inc., and that Landon, Inc. recover as damages an amount equal to the profits realized by Jacuzzi Bros. by reason of its infringement, or a reasonable royalty for the use of the patents in suit, whichever is the greater.

XI.

That when the damages are determined, Landon, Inc. recover the same from Jacuzzi Bros., and that Landon, Inc. have execution therefor.

XII.

That Landon, Inc. is entitled to its expense and cost of suit in the amount of ..... Dollars, and that Landon, Inc. have execution therefor.

Dated: This 8 day of November, 1962.

George B. Harris
United States District Judge

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*In the United States District Court*
*Northern District of California*
*Southern Division*

Civil Action No. 38,754

| | |
|---|---|
| Landon, Inc., a corporation, Plaintiff, vs. International Manufacturing Co., Inc., a corporation, and Rudolph Jacuzzi, an individual, Defendants. | No. 38,754 Civil Action |

## JUDGMENT

This cause, having come on for trial before this Court, witnesses for both sides having been heard, documentary and physical exhibits having been received in evidence, briefs having been filed and oral argument having been made, and the Court having made its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed, as Follows:

I.

That this Court has jurisdiction of this cause and of the parties.

II.

That Landon, Inc., is a corporation of the State of California, having a principal place of business at San Carlos, California.

III.

That International Manufacturing Co., Inc., is a corporation of the State of California, and has a regular and established place of business at Concord, California.

IV.

That Rudolph Jacuzzi, is an individual, a resident of Lafayette, California.

V.

That Landon, Inc., is the sole owner of the Pace Patent in suit No. 2,826,307.

VI.

That Landon, Inc., is the sole owner of the Cavenah et al. Patent in suit No. 2,844,255.

VII.

That the Pace Patent in suit No. 2,826,307 and each of the claims thereof is good and valid in law.

VIII.

That the Cavenah et al. Patent in suit No. 2,844,255 and each of the claims thereof is good and valid in law.

IX.

That International Manufacturing Co., Inc. and Rudolph Jacuzzi have infringed each of the claims of Patents Nos. 2,826,307 and 2,844,255 in suit by the manufacture and sale of International Manufacturing Co., Inc. skim filters.

X.

That a Writ of Injunction issue out of and under the seal of this Court, enjoining and restraining International Manufacturing Co., Inc. and Rudolph Jacuzzi, its and their officers, associates, attorneys, employees, servants and those in privity with International Manufacturing Co., Inc. and Rudolph Jacuzzi, from in any manner manufacturing, using or selling or offering for sale skim filter devices coming within the scope of the claims of Patents Nos. 2,826,307 and 2,844,255.

XI.

That this matter shall be referred to Donald Constine to act as a Master to make and render an accounting as to the extent of the manufacture and sale of infringing skim filter devices by International Manufacturing Co., Inc. and Rudolph Jacuzzi, and the amount of damages suffered by Landon, Inc., and that Landon, Inc. recover as damages an amount equal to the profits realized by International Manufacturing Co., Inc. and Rudolph Jacuzzi by reason of their infringement, or a reasonable

royalty for the use of the patents in suit, whichever is the greater.

XII.

That when the damages are determined, Landon, Inc., recover the same from International Manufacturing Co., Inc. and Rudolph Jacuzzi, jointly and severally, and that Landon, Inc. have execution therefor.

XIII.

That Landon, Inc., is entitled to its expense and cost of suit in the amount of ..... Dollars, and that Landon, Inc. have execution therefor.

Dated: This 8 day of November, 1962.

George B. Harris
United States District Judge